IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 21.05.2015

\+ **W.P.(C) 8596/2014**

TARUN PAL SINGH & ANR … Petitioners

versus

LT. GOVERNOR, GOVT. OF NCT OF DELHI & ORS… Respondent

AND

\+ **W.P.(C) 2888/2014 & CM 14992/2014, 14994/2014 & 16227/2014 & CM 9997/2015**

RAJENDER KISHAN GUPTA & ORS. … Petitioners

versus

UNION OF INDIA … Respondent

\+ **W.P.(C) 4839/2014 & CM 9662/2014 & CM 9998/2015**

SUDHIR KISHAN GUPTA … Petitioner

versus

LT. GOVERNOR, GOVT. OF NCT OF DELHI, NEW DELHI AND ORS ... Respondents

\+ **W.P.(C) 4462/2014 & CM 8898/2014 & CM 9999/2015**

SANJAY GUPTA … Petitioner

versus

LT. GOVERNOR, GOVT. OF NCT OF DELHI & ORS… Respondent

\+ **W.P.(C) 5559/2014 & CM 13785-13786/2014**

VIRENDER KISHAN GUPTA … Petitioner

versus

LT. GOVERNOR, GOVT. OF NCT OF DELHI & ORS… Respondent

\+ **W.P.(C) 6017/2014 & CM 17661/2014& CM 10000/2015**

SAROJ KUMARI GUPTA & ORS … Petitioners

versus

LAND ACQUISITION COLLECTOR & ORS … Respondents

\+ **W.P.(C) 6290/2014 & CM 15190/2014 & CM 9992/2015**

VIJENDER KISHAN GUPTA … Petitioners

versus

LT. GOVERNOR, NCT OF DELHI & ORS … Respondent

Advocates who appeared in this case:-

For the Petitioner : Mr Manish Kaushik in WPC 2888/2014, 4839/2014,4462/2014, 5559/2014 & 6290/2014.
For the Petitioner : Mr Samrat Nigam in WPC 6017/2014 & 6017/2014
For the Respondent L&B/LAC : Mr Yeeshu Jain with Ms Jyoti Tyagi in WPC 2888/14, 4839/2014, 6290/2014 & 8596/2014.
For the Respondent L&B/LAC : Mr Siddharth Panda in WPC 5559/2014 & 6017/2014.
For the Respondent L&B/LAC : Mr B. Mahapatra in WPC 4462/2014.
For the Respondent DMRC : Mr Virender Sood with Mr Anshuman Sood.

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

J U D G M E N T

BADAR DURREZ AHMED, J (Oral)

1. These writ petitions raise common issues and are, therefore, taken up together. In some of these writ petitions the counter affidavits filed on behalf of the respondents have been filed after some delay. The applications for delay are allowed and the delay is condoned. The counter affidavits would be taken on record. In some other writ petitions, the counter affidavits filed on behalf of the Land Acquisition Collector were returned with objections on the ground that the costs which had been imposed had not been deposited. But applications for waiver of those costs have been moved on behalf of the Land Acquisition Collector which we are allowing. Consequently, those counter affidavits shall be taken on record. The pleadings are complete in W.P.(C) 8596/1994 and since identical issues arise in all these writ petitions we shall take that as the lead case.

2. The petitioners seek the benefit of the first proviso after 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') as amended by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment)

Ordinance, 2015 (hereinafter referred to as the '2015 Ordinance'). The facts are that a section 4 notification was issued on 04.06.2009. Powers under section 17(1) and (4) of the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act') were also invoked. On 11.09.2009, the declaration under section 6 of the 1894 Act was made. Possession of the lands pertaining to the present writ petitioners and under the said notification was taken by the land acquiring agency on 09.10.2009. However, the petitioners contend that there was non-compliance of the requirements of section 17 and specifically Section 17(3A) of the 1894 Act which, according to the petitioners, were conditions precedent for the acquisition. We need not, however, examine the matter from this perspective as the case ultimately argued before us was one based on the interpretation of Section 24 of the 2013 Act. On 14.09.2011 Award No. 5/2011-12 was made relating to the subject lands and other lands which were notified under section 4 on 04.06.2009. As stated above, it is an admitted position that the possession was taken over by the land acquiring agency and the same had been handed over to the Delhi Metro Rail Corporation (DMRC). Subsequent to the taking over of possession, the DMRC has already constructed the Chhatarpur Metro

Station which also includes the electric relay station. In other words, the land has been fully utilized by the DMRC.

3. It is also admitted that under the said Award, the total compensation was computed at Rs. 64,09,60,887.57. According to the petitioners, the compensation so awarded had not been deposited in respect of the majority of land holdings in the account of the beneficiaries. As such, all the beneficiaries including the petitioners specified in the notification under section 4 of the 1894 Act became entitled to compensation in accordance with the 2013 Act. In the counter affidavits filed on behalf of the Land Acquisition Collector it has been stated that an amount of Rs. 13,57,82,562.39 was disbursed as compensation under the said acquisition. It is, further, stated that a sum of Rs. 1,95,35,917 was also deposited with the Reference Court under section 30 of the 1894 Act. Further, a sum of Rs. 5,48,83,355 was also stated to have been sent to the Reference Court under sections 30-31of the 1894 Act. The learned counsel for the petitioners point out that even as per the said counter affidavits it is evident that a total sum of approximately Rs. 21 crores only is said to have been paid towards compensation. Without going into the issue as to whether the amount was deposited in the account of the beneficiaries or not, the

learned counsel for the petitioners submit that it is evident that the sum of Rs. 21 crores does not represent the compensation in respect of majority of land holdings where the total compensation was approximately Rs. 64 crores.

4. The case of the petitioners is that the said first proviso would fully apply and therefore they are entitled to compensation under the 2013 Act. The learned counsel for the respondents submitted that the said first proviso would not be applicable inasmuch as the case of the petitioners does not fall under section 24(2) of the 2013 Act. Because, according to them, the Award was made less than five years prior to the commencement of the 2013 Act. Therefore, the petitioners would be governed by the provisions of section 24(1)(b) of the 2013 Act and as such the acquisition proceedings would continue under the provisions of the 1894 Act as if the same had not been repealed.

5. Before we proceed to analyse the rival arguments, it would be relevant to set out section 24 of the 2013 Act as amended by the 2015 Ordinance. The same reads as under:-

> "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 (1 of 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 (1 of 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.

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."

6. It is evident that under section 24(1), two situations are set out. One where no award has been made under section 11 of the 1894 Act and the other where an award has been made under section 11 of the said Act. Insofar as the latter case is concerned, section 24(2) provides an exception and it begins with a non-obstante clause. In other words, in cases where Awards have been made under section 11 of the 1894 Act, another sub-category of Awards has been carved out by virtue of section 24(2) and those relate to Awards which had been made more than five years prior to the commencement of the 2013 Act, that is, more than five years prior to 01.01.2014. In such cases, that is, where the Awards have been made more than five years prior to the commencement of 2013 Act, if physical possession of the land in question has not been taken or compensation has not been paid, the acquisition proceedings are deemed to have lapsed. [see: (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].

7. It is, therefore, clear that in those cases where the Awards have been made more than five years prior to the commencement of the Act, section 24(2) would have applicability, subject to the other conditions being fulfilled. But, in cases where the Awards have been made within five years of the commencement of the 2013 Act, section 24(2) would not apply. It is also clear that once the conditions of section 24(2) are met, the acquisition itself lapses and therefore no occasion would arise for invoking the first proviso which is set out after section 24(2). This is so because the first proviso entails a situation where the acquisition is saved but the compensation is awarded under the 2013 Act. The proviso cannot blow life into the acquisition which has lapsed under the main provision of sub-section (2) of Section 24 of the 2013 Act. It is for this reason that we think that the first proviso which has been placed after section 24(2) is not really a proviso to section 24(2) but, a proviso to Section 24(1)(b). The said first proviso and Section 24(1)(b) can easily be read together. Section 24(1)(b) in effect relates to all cases where awards have been under the 1894 Act except those which are covered under Section 24(2). Clearly, awards made less than five

years prior to the commencement of the 2013 Act would fall under Section 24(1)(b). As such, the general rule in such cases is that the provisions of the 1894 Act would continue to be applicable, as if the 1894 Act had not been repealed. However, the said first proviso carved out an exception to this general rule by providing that in cases where 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 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. This is a provision for the benefit of landowners inasmuch as even in cases of completed acquisitions, if the conditions stipulated under the said first proviso stand satisfied, the compensation would have to be provided under the more beneficial provisions of the 2013 Act.

8. Thus, while the said first proviso can harmoniously exist when read as a proviso to Section 24(1)(b), it cannot so exist when sought to be read as a proviso to Section 24(2) of the 2013 Act.

9. In ***Sree Balaji Nagar*** *(supra)* while dealing with the said first proviso after Section 24(2) of the 2013 Act, the Supreme Court observed as under:-

> "11. …. There is nothing in the language of the proviso to restrict the meaning of the words used in Section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years' old but the physical possession of the land has not been taken over or the compensation has not been paid. The law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms, as held by Privy Council in the case of Madras and Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality AIR 1944 PC 71 and by this Court in the case of C.I.T. v. Indo Mercantile Bank Ltd. AIR 1959 SC 713."

10. In ***Surender Singh*** *(supra)* this Court also had occasion to deal with submissions with regard to the said first proviso. This Court observed as under:-

> "7. ….Furthermore, the proviso after Section 24(2) of the 2013 Act does not, in any manner, restrict the meanings of the words used in Section 24(2) which clearly mandate that the proceedings shall be deemed to have lapsed if the award has been made five years or more prior to the commencement of the 2013 Act but the physical possession of the land has not been taken over or the compensation has not been paid. The Supreme Court in ***Sree Balaji Nagar*** (*supra*) specifically dealt with the proviso and came to the above conclusion and in doing so also noted that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms.
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> 8. Mr Sanjay Poddar, senior advocate, appearing for the Land Acquisition Collector, sought to distinguish the Supreme Court decision in ***Pune Municipal Corporation*** (*supra*) by

contending that the question before the Supreme Court in that case was limited to the expression 'compensation has not been paid' as appearing in section 24(2) of the 2013 Act. We are afraid we cannot read any such limitation into the clear and unequivocal observations of the Supreme Court which have been set out above. Moreover, the same have been reiterated and reinforced by the Supreme Court in its subsequent decisions in ***Shiv Raj*** (*supra*) and ***Sree Balaji Nagar*** (*supra*).

9. Mr Poddar also sought to contend that the proviso after section 24(2) of the 2013 Act ought to be construed as a saving clause. If so construed, the proviso saves the position existing on the commencement of the 2013 Act, implying thereby that if the majority of the landholders have received the compensation then the 1894 Act would apply. If not, then all would be entitled to compensation under the 2013 Act. Such an argument has to be stated to be rejected as it runs contrary to the clear provisions of deemed lapsing contained in section 24(2) of the 2013 Act. As held in ***Sree Balaji Nagar*** (*supra*) "there is nothing in the language of the proviso to restrict the meaning of the words used in section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years' old but the physical possession of the land has not been taken over or the compensation has not been paid."

10. Mr Rakesh Khanna, senior advocate, appearing on behalf of the DDA sought to argue that the proviso would have to be considered even in cases which clearly fall within Section 24(2) of the 2013 Act because there is a *colon* which separates the main part of Section 24(2) and the proviso. It was contended that the proviso, therefore, has to be read as part of Section 24(2) and not as a proviso. We are afraid that this argument is also not available to the respondents in view of the clear conclusion of law set out by the Supreme Court in the case of ***Sree Balaji Nagar*** (*supra*). Even otherwise, the argument is merely to be stated to be rejected."

11. Coming back to the facts in the present petitions, we find that the Awards were made within the period of five years prior to the commencement of the 2013 Act. Clearly, section 24(2) does not apply. On the other hand, section 24(1)(b) would apply. But, the exception carved out by the first proviso which has been placed after section 24(2) would also apply. This is so because compensation in respect of the majority of land holdings has not been deposited in the account of the beneficiaries. This is an admitted fact. The consequence of this would be that all the beneficiaries which include the petitioners herein who have been specified in the notification under section 4 of the 1894 Act would be entitled to compensation in accordance to the provisions of the 2013 Act. It is held accordingly.

12. We may point out that one more aspect needs to be considered and the same has been raised by the learned counsel for the Land Acquisition Collector to the effect that in a case of acquisition under emergency provisions, if possession is taken immediately and 80% of the estimated compensation is not paid then and there, then the acquisition itself does not lapse but the land holders are only entitled to interest. We do not see as to how this would in any way change the view that we have taken because this

was the position under section 1894 Act whereas new rights have accrued to the petitioners under the 2013 Act and while interpreting and construing the provisions of the new Act, we have come to the view that petitioners are entitled to compensation under the 2013 Act in view of the fact that the first proviso after Section 24(2) of the 2013 Act is fully applicable in the manner indicated above.

13. The writ petitions are allowed to the extent that the acquisitions will stand but compensation shall be paid to the petitioners under the 2013 Act.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MAY 21, 2015
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