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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 02.02.2015

W.P.(C) 5358/2014 & CM 10666/2014

HARBANS KAUR & ORS.

..... Petitioners

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr B.S. Maan with Mr Paritosh Tomar, Mr Vishal Maan
For the Respondents	: Mr Yeeshu Jain with Ms Jyoti Tyagi for L&B/LAC.
For the Respondent DDA	: Mr Dhanesh Relan with Mr Arush Bhandari.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. 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 Supplementary Award No.1916 dated 12.05.1967 was made, *inter alia*, in respect of the petitioners' land comprised in Khasra No. 1403 to the extent of 4 biswas in village Tihar, Delhi, shall be deemed to have lapsed.

2. It is the case of the petitioners that physical possession of the subject land has not been taken by the land acquiring agency. On the other hand, it is the case of the respondents that physical possession of the said land was taken on 07.06.1967. The learned counsel for the petitioners has drawn our attention to various documents which have been filed along with the rejoinder affidavit at pages 114,117,123,126,129 and 131 which indicate that the physical possession of the subject land could not be taken because the same was built up. We need not refer to those documents inasmuch as the fact that the physical possession has not been taken and that only paper possession was taken has been recorded in the order of this court in W.P.(C) 6949/2012. The order was passed on 07.01.2013 where it has clearly been indicated that only paper possession was taken and physical possession had not been taken. Therefore, we will have to hold that the physical possession of the subject land is with the petitioners and not with the land acquiring agency. Insofar as the question of compensation is concerned it is the case

of the respondents that the same was deposited in the reference court on 13.11.1967 and 31.05.1967. It is the case of the petitioners that the compensation was not offered to the petitioners and therefore in view of the decision of the Supreme Court in **Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors:** (2014) 3 SCC 183, the same cannot be regarded as compensation having been paid to the petitioners.

3. We are not entering into the arena of controversy insofar as compensation is concerned because the position with regard to the physical possession is clear. Physical possession of the subject land has not been taken by the land acquiring agency. The award was admittedly made more than five years prior to the commencement of the 2013 Act. The second proviso to section 24(2) of the 2013 Act is also not available to the respondents inasmuch as the Supreme Court 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 v. State of Punjab & Ors,** **Civil Appeal No. 7424/2013** decided by the Supreme Court on 22.01.2015, has held that the said second proviso to section 24(2) of the 2013 Act has prospective operation from 31.12.2014 and does not taken away vested rights which accrued in favour of the petitioners on 01.01.2014 when the

2013 Act came into effect. Thus, 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:-

- (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;
- (iv) **Surinder Singh vs. Union of India and Ors.:** W.P.(C) 2294/2014 decided 12.09.2014 by this Court.

4. 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.

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

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

FEBRUARY 02, 2015.

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