$~31

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.08.2015

+ W.P.(C) 3160/2015 & CM No.5627/2015

BAKSHI RAM & SONS (HUF) ... Petitioner

versus

UNION OF INDIA & ORS. ... Respondents

Advocates who appeared in this case:

For the Petitioners : Ms Richa Oberoi, Advocate.
For the respondents :Mr Jitendra Kumar Tripathi, Advocate for respondent No.1.
Mr Sanjay Kumr Pathak with Mr Sunil Kumar Jha and Mr Kaushal Raj Tater, Advocates for respondent No.2.

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 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.66/1986-87 dated 19.09.1986 was made, *inter alia*, in respect of the petitioner's land, comprised in Khasra No. 2609/727-728 (5-01) measuring 5 bighas and 1 biswa in all, in Village Tuglakabad, New Delhi, shall be deemed to have lapsed.

2. It is the case of the petitioner that the physical possession is with the petitioner (HUF). On the other hand, the learned counsel for the respondents contend that physical possession of the same was taken over by the land acquiring agency on 22.09.1986. However, the learned counsel for the petitioner has drawn our attention to an order passed by a Division Bench of this Court in WP(C) 1907/1986 which pertains to the subject land. The order is dated 03.02.2010 and it has been clearly indicated in the said order (a copy of which is at pages 40 to 46 of the paper book) that it cannot be said that the physical possession stood taken over by the respondents so as to deprive the petitioners therein of consideration of their application under Section 48 of the 1894 Act on merits. It is evident from the said order that physical possession is

retained by the petitioner because otherwise the question of any consideration under Section 48 of the 1894 Act would not have arisen at all. The learned counsel for the petitioner also informed us that the parties had filed a special leave petition before the Supreme Court which is still pending. In the said proceedings before the Supreme Court, the petitioner had filed IA No.3 in SLP (C) (26831/2010) seeking the benefit of the provisions of Section 24(2) of the 2013 Act. However, that application was withdrawn with liberty to seek appropriate legal recourse in accordance with law. The Supreme Court granted permission for withdrawal of the said application. It is stated by the learned counsel for the petitioner that consequent to the said liberty, the present petition has been filed.

3. From the above narration of facts, it is clear that the physical possession is with the petitioner. As regards compensation, it is the case of the respondents that the same has been deposited in the treasury though it has not been paid to the petitioner nor was it offered to the petitioner.

4. The learned counsel for the respondents placed reliance on the second proviso to Section 24(2) of the 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 <u>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.</u>"
>
> (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 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.

6. The learned counsel for the respondents are relying on the third alternative inasmuch as it has been contended that the amount for compensation has been placed in the government treasury. According to the learned counsel for the respondents, this amounts to deposit "in any designated account maintained for this purpose". Consequently, it is urged that the entire period during which this amount was lying in the treasury ought to be excluded.

7. The learned counsel for the petitioner contends that the newly added proviso does not have any application to the facts prevailing in the present case. The question of compensation lying deposited in a court or in any designated account maintained for such purposes would only arise in a case where possession has 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. In any event, the second proviso to Section 24(2) introduced by virtue of the Ordinance of 2014 has been held to be only prospective in operation by virtue of the Supreme Court decisions in ***M/s Radiance Fincap (P) & Ors. v. Union of India & Ors.*** decided on 12.1.2015 in **Civil Appeal No.4283/2011** and ***Karnail Kaur & Ors. Vs. State Of Punjab & Ors.*** decided on 22.1.2015 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. The same would be the position in respect of a deposit in "any designated account maintained for this purpose". Consequently, the mere deposit in the treasury, 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

AUGUST 18, 2015
st