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

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Judgment delivered on: 17.08.2015

+ **W.P.(C) 3653/2015 & CM 6502/2015**

**GULBIR VERMA & ORS**

... Petitioners

versus

**UNION OF INDIA & ORS.**

... Respondents

**Advocates who appeared in this case:**

|                            |                                            |
|----------------------------|--------------------------------------------|
| For the Petitioners        | : Mr S.K.Rout with Mr Vinay Kumar          |
| For the Respondent Nos.1&2 | : Mr Siddharth Panda                       |
| For the Respondent UOI     | : Mr Ripu Daman Bhardwaj with Mr T.P.Singh |
| 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. 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 Award No. 228/1986-87 dated 19.09.1986 was made, *inter alia*, in respect of the petitioners’ land, comprised in Khasra Nos. 976 measuring 12 bighas and 13 biswas in all, in village Bahapur, New Delhi, shall be deemed to have lapsed.

2. The learned counsel for the petitioners states that possession in respect of the entire 12 bighas 13 biswas has not been taken by the land acquiring agency and physical possession is with the petitioners. On the other hand the learned counsel for the Land Acquisition Collector contends that the land to the extent of 5 bighas 4 biswas was built up and therefore physical possession of the same was not taken. However, land to the extent 5 bighas 10 biswas was taken into physical possession by the land acquiring agency in 1993 and a further 1 bigha 19 biswas was taken over in 1997. But, the learned counsel for the petitioners has handed over certified copies of orders passed in W.P.(C) 3219/1992 by this court. The certified copies of the orders dated 24.09.1992 and 31.03.1993 are taken

on record. By virtue of the said order dated 24.09.1992 in C.W.P 3219/1992 an interim order was granted directing that the petitioners shall not be dispossessed from the land in question bearing khasra no. 976 of the revenue estate of village Bahapur and that no structure be built by the respondents on the said land. The said interim order was made absolute on 31.03.1993 till the decision in the writ petition. The said writ petition was dismissed on 19.02.2009. An SLP preferred therefrom was also dismissed on 15.02.2010. The fact of the matter is that when there was a stay in operation granted by this court, the respondents could not have taken possession in 1993 and 1997. This clearly establishes the claim of the petitioners that physical possession of the 12 bighas 13 biswas of land has continued to remain with the petitioners. Insofar as the compensation is concerned, it is stated to have been deposited in the treasury, though the same has not been paid to the petitioners nor was it offered to them.

3. 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 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.”

(underlining added)

4. On a plain reading of the proviso, it is evident that its purpose is to compute the period of five years referred to in Section 24(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.

5. 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.

6. The learned counsel for the petitioners 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 petitioners 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.

7. 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 petitioners 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.

8. 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.

9. As such, in the present case, neither physical possession of the subject land has been taken nor has any compensation been paid to the petitioners. 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.

10. 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.

11. 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 17, 2015**

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