

\$~16

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 23.02.2015

+ **W.P. (C) 6712/2014 & CM APPL. 15919/2014**

M/S PROFILE ESTATES PVT. LTD.

... Petitioner

versus

UNION OF INDIA & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sumit Bansal, Mr Ateev Mathur and Ms Richa Oberoi.

For the Respondents : Mr Bhagvan Swarup Shukla, CGSC with Mr Vinod Kumar Tiwari, Advocate for respondent No.1.
Mr Siddharth Panda, Advocates for L&B/LAC/GNCTD.
Mr Pawan Mathur, Advocate for DDA.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. Mr Siddharth Panda, the learned counsel appearing for respondent No.2 has handed over the affidavit on behalf of Land Acquisition Collector (South). The same is taken on record. The learned counsel for

the petitioner does not wish to file any rejoinder affidavit inasmuch as all the necessary averments are contained in the writ petition.

2. 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. 15/87-88 dated 05.06.1987 was made, *inter alia*, in respect of the petitioner’s land, comprised in Khasra Nos.1310 (0-10), 1611 (0-12), 1612/2 (0-11), 1631/1 (4-1), 1632/1 (0-16), 1632/2 (2-4) and 1632/3 (1-16) in all measuring 10 bighas 10 biswas, in village Chattarpur, New Delhi shall be deemed to have lapsed.

3. In this case, it has been admitted by the concerned Land Acquisition Collector that physical possession of the subject land has not been taken. However, it is contended by learned counsel for the respondent that compensation in respect of some of the khasras has been deposited in the Treasury and in respect of some, it has been deposited in

the Court. The deposit in the Court was made pursuant to an order dated 30.12.2013 of the learned Vacation Judge passed in CM(M) No. 1411/2013. By virtue of that order the said CM Main amongst others was disposed of, recording that without prejudice to the rights and contentions of the land owners, the petition would be treated as a tender to the court of the learned Additional District Judge, Delhi as on 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 petitioner herein. Therefore the same, following the decision in **Gyanender Singh** (*supra*), cannot be regarded as

compensation having been paid to the petitioner. In so far as some of the khasra numbers are concerned, it has been stated that compensation amount was deposited in the Treasury, though the same has not been paid to the land owner nor was it offered to the land owner.

4. The learned counsel for the respondents placed reliance on the second proviso to Section 24(2) of 2013 Act, which has been introduced by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 (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 account maintained for this purpose shall be excluded.”

(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 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 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 in part been deposited in Court and in part it has been placed in the government treasury. According to the learned counsel for the respondents, the latter payment amounts to deposit “in any 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 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 account maintained for such purposes.

8. In any event, the second proviso to Section 24(2) introduced by virtue of the said Ordinance 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 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.

As aforesaid, 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 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

FEBRUARY 23, 2015

n