

\$~28 (Category-I)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 19.01.2015

W.P.(C) 7034/2014 & CM No.16502/2014

KRISHEN K. SETH & ORS.

..... Petitioners

versus

UNION OF INDIA AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Ravi Gupta, Sr Advocate with Ms Amrita Sanghi, Mr Gurmehar Sistani and Ms Priyanka Raj, Advocates.

For the Respondents : Mr Bhagwan Swarup Shukla, CGSC with Mr Brajesh Kumar, Advocate for respondent No.1/UOI.
Mr Pawan Mathur, Advocate for respondent No.3/DDA.
Mr Yeeshu Jain with Ms Jyoti Tyagi, Advocates for respondent Nos.4 & 5.

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. The counter affidavit handed over on behalf of the respondent Nos.4 & 5 filed by Mr Yeeshu Jain, Advocate is taken on record. The learned counsel for the petitioners does not wish to file any rejoinder in view of the averments already contained in the writ petition.

2. By way of this writ petition the petitioners are seeking 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.15/87-88 dated 05.06.1987 was made, *inter alia*, in respect of the petitioners' land comprised in Khasra Nos. 1628/2 (2-0), 1628/1/1 (0-8), 1629/2 (4-1), 1625/1 (0-7), 1625/2 (1-16), 1626 (4-16), 1627/1(3-18), 1627/2 (0-18) and 1628/1 (1-13) measuring 19 bighas 16 biswas in Village Chattarpur shall be deemed to have lapsed.

3. It is an admitted position that neither physical possession of the subject lands has been taken by the land acquiring agency, nor has any compensation been paid to the petitioners. The award was made more than five years prior to the commencement of the 2013 Act. 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. The learned counsel for the respondent seeks to rely on the second Proviso to Section 24(2) of the 2013 Act which was introduced by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 which came into effect on 31.12.2014. However, such reliance cannot be placed by the respondent in view of the fact that the said Ordinance has been held to be prospective in nature and does not take away the vested rights. This has so been held by the Supreme Court in a recent decision in **M/s Radiance Fincap (P) & Ors. v. Union of India & Ors.** decided on 12.1.2015 in **Civil Appeal No.4283/2011** wherein the Supreme Court has held as under:

“The right conferred to the land holders/owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid sub-section without giving retrospective effect to the same.”

5. It is evident from the above that the Ordinance is prospective and rights created in favour of the petitioners as on 01.01.2014 are undisturbed by the virtue of the said Ordinance.

6. 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.

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

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

JANUARY 19, 2015
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