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

% Judgment delivered on: 19.01.2015

+ **W.P.(C) 7131/2014 & CM 16690/2014**

KHEM CHAND AND ORS

... Petitioners

versus

GOVT OF NCT OF DELHI AND ORS

... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Rajiv Kumar Ghawana, Advocate.

For the Respondents : Mr Yeeshu Jain with Ms Jyoti Tyagi, Advocates for
respondent Nos.1 & 2.

Mr Pawan Mathur, Advocate for respondent No.3

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. Mr Yeeshu Jain, Advocate has handed over the counter affidavit on behalf of the respondent Nos.1 & 2. The same is taken on record. The learned counsel for the petitioners does not wish to file any rejoinder affidavit and would be relying on the averments made in the writ petition.

2. By way of this writ petition, the petitioner is 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 the Award No. 1/2007-2008 dated 08.11.2007 was made, inter alia, in respect of the petitioners' land comprised in khasra number 129 measuring 4 bighas 14 biswas in village Mehrauli, shall be deemed to have lapsed.

3. It is an admitted position that the physical possession of the subject land has not been taken by the land acquiring agency. However, insofar as the compensation is concerned, it is the case of the petitioners that the same has not been paid to them whereas it is the case of the respondents that the said compensation was deposited in court pursuant to an order passed by a Vacation Judge of this court in C.M.(Main) 1399/2013 passed on 30.12.2013. By virtue of that order, the said C.M.(Main), amongst others, was disposed of by recording that without prejudice to the rights and contentions of the land holders the cheque tendered in each petition would be treated as tendered to the court of the learned Additional District Judge, Delhi as of 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) 1399/2013 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.

4. In these circumstances, it is clear that neither physical possession of the subject land 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 necessary for the applicability 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

- (iv) **Surender Singh v. Union of India & Others:**
WP(C) 2294/2014 decided on 12.09.2014 by this Court; and
- (v) **Gyanender Singh & Ors v. Union of India & Ors:**
W.P.(C) 1393/2014.

5. 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.

6. 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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