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

% Judgment delivered on: 27.01.2015

+ **W.P.(C) 7497/2014 & CM 17747/2014**

ALLIMUDDIN & ANR. Petitioners

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Vishal Maan, Advocate.

For the Respondents : Mr Yeeshu Jain with Ms Jyoti Tyagi, Advocates for
L&B/LAC.

Mr Sanjeev Sabharwal, Standing Counsel for DDA.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. 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. A declaration is sought to the effect that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') in respect of which Award No.10/87-88 dated 14.05.1987 was made, *inter alia*, in respect of the petitioners' land comprised in Khasra Nos.475(4-16), 476(4-16),

477(2-08) and 468(2-08) measuring 12 bighas in all in village Sayoorpur shall be deemed to have lapsed.

2. Though the respondents claimed that possession of the said land was taken on 14.07.1987, the petitioners dispute this and maintain that physical possession has not been taken. However, insofar as the compensation is concerned, it is the case of the petitioner 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 for khasra no. 468 in C.M.(Main) 1407/2013 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) 1407/2013 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.

3. Without going into the controversy of physical possession, this much is clear that the Award was made more than five years prior to the commencement of the 2013 Act and the compensation has also not been paid. The necessary ingredients for the application of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following cases stand satisfied:-

- (1) **Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors:** (2014) 3 SCC 183;
- (2) **Union of India and Ors v. Shiv Raj and Ors:** (2014) 6 SCC 564;
- (3) **Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors:** Civil Appeal No. 8700/2013 decided on 10.09.2014;

- (4) **Surender Singh v. Union of India & Others:** WP(C) 2294/2014 decided on 12.09.2014 by this Court; and
- (5) **Girish Chhabra v. Lt. Governor of Delhi and Ors:** WP(C) 2759/2014 decided on 12.09.2014 by this Court.

4. The learned counsel for the respondent, however, places reliance on the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014, which came into effect on 31.12.2014 whereby the second Proviso has been added to sub-section 2 to Section 24 of the 2013 Act. The said plea, however, is no longer available to the respondents in view of the decision of the Supreme Court in the case of **M/s Radiance Fincap (P) & Ors. v. Union of India & Ors.** decided on 12.01.2015 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.”

The same view has also been reiterated in **Karnail Kaur & Ors v. State of Punjab & Ors.** **Civil Appeal No. 7424/2013** decided by the Supreme Court on 22.01.2015.

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 land 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

JANUARY 27, 2015
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SANJEEV SACHDEVA, J