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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 23.02.2015

+ W.P.(C) 7803/2014 & CM 18330/2014

PRIYANEET KAUR & ORS. ... Petitioners

versus

GOVT OF NCT OF DELHI & ORS. ... Respondents

<u>Advocates who appeared in this case:</u>

For the Petitioner	: Mr Ms Smita Mann with Mr Vishal Maan
For the Respondent No.1	:Mr Yeeshu Jain, Adv with Ms Jyoti Tyagi
For the Respondent No.2	: Mr Siddharth Panda
For the Respondent/DDA	: Mr Pawan Mathur with Mr Himanshu Gupta.

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. 14/1987-88 dated 26.05.1987 was made, *inter alia*, in respect of the petitioners' land, comprised in Khasra Nos.948(1-1), 949 (4-18), 950min(2-19) and 951(3-11) measuring 12 bighas and 9 biswas in all, in Village Satbari shall be deemed to have lapsed.

2. In this case, it has been admitted by the concerned Land Acquisition Collector that physical possession of the subject land has not been taken. This is evident from the counter-affidavit filed on behalf of the concerned Land Acquisition Collector. It is, however, contended by the learned counsel for the respondents that the amount of compensation in respect of the same was deposited in the treasury, though the same has not been paid to the land owner nor was it offered to the land owner.

3. 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 <u>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.</u>"

(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 Section24(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.

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 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 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 account maintained for such purposes.

7. 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 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 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 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.

10. However, the learned counsel for the respondents contend that this petition is not maintainable by the present petitioners in view of the fact that they are subsequent purchasers. The learned counsel for the respondents submitted that it is settled law that a subsequent purchaser cannot challenge the acquisition proceedings and he is only entitled to

seek compensation. They placed reliance on the Supreme Court decision in the case of ***KN Aswathnarayana Setty (D) Tr. LRs.& Ors. Vs. State of Karnataka & Ors.***: **AIR 2014 SC 279**. A reference in this connection was also made to the Supreme Court decision in the case of ***Meera Sahni v. Lieutenant Governor of Delhi and Ors.:*** **(2008) 9 SCC 177**.

11. There is no doubt that in the context of the 1894 Act the Supreme Court clearly held that a subsequent purchaser would not have a right to challenge the acquisition and would only have a right to seek compensation. But, the position obtaining at present is different. This is a petition which does not seek to challenge the acquisition proceedings but seeks a declaration of a right which has enured to the benefit of the petitioners by virtue of the operation of Section 24(2) of the 2013 Act. Once the acquisition is deemed to have lapsed because of the operation of the deeming provision of Section 24(2) of the 2013 Act, the benefit of the same cannot be denied to the petitioners on the ground that the petitioners are subsequent purchasers. This is, of course, provided that the conditions precedent for the application of the deeming provision contained in Section 24(2) of the 2013 Act are satisfied.

12. 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.

13. 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
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