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

% Judgment delivered on: 23.03.2015

\+ **WP(C) No. 8121/2014 & CM 18937/2014**

INDERJEET & ORS .... Petitioners

versus

UNION OF INDIA & ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr N.S. Vasisht with Mr Vishal Singh, Ms Jyoti Kataria. Mr M.P. Bhargava
For the Respondent No. 1&2 : Mr Suparna Srivastava
For the Respondent No. 3 : Mr Sanjeev Sabharwal with Mr Hem Kumar
For the Respondent No. 4&5 : Mr Siddharth Panda with Mr Priyabrat Sahu

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The counter affidavit handed over by the learned counsel appearing on behalf of respondent Nos. 4 & 5 is taken on record. The petitioners do not wish to file any rejoinder affidavit inasmuch as the necessary averments are contained in the writ petition.

2. 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. 242/86-87 dated 22.09.1986 was made, *inter alia*, in respect of the petitioners' land comprised in Khasra No. 862/2 (1-18) and 871/1 (3-00) measuring 4 bighas and 18 biswas in all in village Mahipalpur shall be deemed to have lapsed.

3. The stand of the respondents is that physical possession of the said land was taken on 23.09.1986. This is disputed by the petitioners, who claim to be in actual physical possession of the subject land.

4. In so far as the question of compensation is concerned, the same has not been paid to the petitioners but according to the respondents, the same has been deposited in the treasury. Therefore, they seek to invoke 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 (hereinafter referred to as "the said Ordinance").

5. So far as the applicability of the second Proviso to Section 24(2) of the 2013 Act is concerned, the same cannot be relied upon by the respondents inasmuch as the said Ordinance has been held to be prospective in nature and does not take away vested rights. This has so been held by the Supreme Court in recent decision in ***M/s Radiance Fincap (P) Ltd. & Ors. Vs. Union of India & Ors.*** ***decided on 12.01.2015 in Civil Appeal No. 4283/2011*** wherein the Supreme Court 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."

6. The same has been reinforced by the Supreme Court in ***Karnail Kaur & Ors. Vs. State of Punjab & Ors.*** ***Civil Appeal No. 7424/2013 decided on 22.01.2015.***

7. From the above decisions, it is evident that the said Ordinance is prospective in nature and the rights created in favour of the petitioners as on 01.01.2014 by virtue of the 2013 Act are undisturbed by the second Proviso to Section 24(2) of the 2013 Act, which has been introduced by the said Ordinance.

8. Without going into the controversy with regard to the 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 to the petitioners, but has only been deposited in the treasury, which does not amount to payment of compensation as interpreted by the Supreme Court in ***Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors*: (2014) 3 SCC 183**.

9. All 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) ***Union of India and Ors v. Shiv Raj and Ors*: (2014) 6 SCC 564**;

(2) ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors*: Civil Appeal No. 8700/2013** decided on 10.09.2014;

(3) ***Surender Singh v. Union of India & Others: WP(C) 2294/2014*** decided on 12.09.2014 by this Court; and

(4) ***Girish Chhabra v. Lt. Governor of Delhi and Ors*: *WP(C) 2759/2014*** decided on 12.09.2014 by this Court.

10. 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.

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

BADAR DURREZ AHMED, J

MARCH 23, 2015 **SANJEEV SACHDEVA, J**
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