

\$~30

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

% Judgment delivered on: 02.02.2015

+ **W.P.(C) 8674/2014 & CM 19961/2014**

CHANDER SAIN

.... Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rajiv Kumar Ghawana, Advocate.

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

Mr Dhanesh Relan with Mr Arush Bhandari, Advocates 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. The counter affidavit handed over by Mr Jain on behalf of respondent Nos.1 & 2 is taken on record. The learned counsel for the petitioner does not wish to file any rejoinder affidavit inasmuch as he would be relying on the averments contained in the writ petition.

2. The petitioner seeks 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.21/92-93 dated 18.06.1992 was made, *inter alia*, in respect of the petitioner's land comprised in Khasra Nos.409 Min (1-00) measuring 1 Bigha in all in village Jasola shall be deemed to have lapsed.

3. Though the respondents claimed that possession of the said land was taken on 16.07.2007, the petitioner disputes this and maintains that physical possession has not been taken. However, insofar as the issue of compensation is concerned, it is an admitted position that it has not been paid.

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 petitioner as on 01.01.2014 are undisturbed by the virtue of the said Ordinance.

6. 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.

7. As a result, the petitioner is 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.

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

BADAR DURREZ AHMED, J

FEBRUARY 02, 2015
st

SANJEEV SACHDEVA, J