

\$~89

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 23.11.2015

+ **W.P.(C) 6766/2015 & CM 12351/2015**

VIKRAM MADHOK

... Petitioner

versus

UNION OF INDIA & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr Gurmehar S. Sistani
For the Respondent No.1	: Mr Prasanta Varma with Mr Jitendra K. Tripathi
For the Respondent DDA	: Mr Dhanesh Relan
For the Respondent No.3&4	: Mr Siddharth Panda

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 Panda on behalf of respondent nos. 3&4 is taken on record. The learned counsel for the petitioner does not wish to file any rejoinder affidavit as the necessary averments are already contained in the writ petition.

2. By way of this writ petition 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. The petitioner, consequently, seeks 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 petitioner’s land, comprised in Khasra No. 183 measuring 4 bighas and 16 biswas in all, in Village Satbari, New Delhi, shall be deemed to have lapsed.

3. 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.

4. The learned counsel for the respondents also contend that this petition is not maintainable by the present petitioner in view of the fact that he is a subsequent purchaser. 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. The learned counsel for the respondents submitted that the transfer whereby the original owners are alleged to have transferred their right in favour of the current petitioner would not confer any title upon the petitioner and at the most the petitioner would be entitled only to claim compensation on the basis of the original owner's title. 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.

5. 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 petitioner 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 petitioner on the ground that the petitioner is a subsequent purchaser. 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.

6. 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. 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.

7. As such, in the present case, neither physical possession of the subject land has been taken nor has any compensation been paid to the petitioners. The Award was made more than five years prior to the coming into force of the 2013 Act.

8. 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 lands are deemed to have lapsed. It is so declared.

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

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

NOVEMBER 23, 2015

kb

