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

% Judgment delivered on: 09.12.2016

+ **W.P.(C) 6507/2014 & CM Nos. 15540/2014 & 34388/2016**

GODFREY PHILLIPS (I) LTD

.... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Aditya Singh with Mr Sumeet Tahilramani

For the Respondents : Mr Yeeshu Jain with Ms Jyoti Tyagi for LAC/L&B
Mr Dhanesh Relan for DDA.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. 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.10/87-88 dated 20.05.1987 was made, *inter alia*, in respect of

the petitioner's land comprised in Khasra Nos. 376 (4-06), 377 (4-16), 381 min (1-02), 383 (4-16), 384 (4-06), 385 (4-06), 386/1 min (0-04), 386/2 min (0-06) and 390 (4-06) total measuring 28 bighas and 8 biswas in all in village Sayoorpur shall be deemed to have lapsed.

2. Admittedly, possession of the subject land, other than khasra Nos. 384, 385 and 390, was not taken and in respect thereof compensation was also not paid. In respect of khasra Nos. 376 and 381, the compensation amount was deposited in Court pursuant to an order dated 30.12.2013 passed in CM (Main) 1407/2013. This would not amount to payment of compensation as held by us in several cases. Therefore, it is clear that insofar as the subject property, other than khasra Nos. 384, 385 and 390, is concerned, neither possession has been taken nor compensation has been paid.

3. Though the respondents claim that possession of khasra Nos. 384, 385 and 390 was taken on 14.07.1987, the petitioner disputes this and maintains that physical possession has not been taken over. With regard to the issue of compensation in respect of these three khasra numbers, the learned counsel for the petitioner submitted that earlier in respect of the

very same acquisition proceedings, the Division Bench of this Court had dealt with the case of **Balbir Singh v. Union of India & Ors.: 39 (1989)** **DLT 233**. In that decision, the Division Bench had, *inter alia* observed and held as under:-

“2. The Delhi Administration as also the Delhi Development Authority have taken up a very fair stand before us. Their contention is that certain land owners have received compensation and as such they should not be allowed to deal with the land till the compensation is paid back to the Delhi Administration with interest at the rate of 12% per annum from the date they received the payment till the date they have refunded the amount. The contention raised is quite fair and is accepted. It is further stated by learned counsel for the respondents that no effort would be made to take possession of any land from anybody and the possession already taken of these lands will be restored back to the land owners on receipt of the refund of compensation, if made with interest. It is further contented that in certain cases, the land owners have been allotted alternate plots in lieu of their land having been acquired and in those cases the alternate plots must be surrendered before the land owners can take advantage of the quashing of the notifications. The counsel for the petitioner accepts this suggestion of the respondents. Consequently, we direct that the possession of the petitioners will not be disturbed except in case where the compensation has been received by the land owners or alternate plots have been allotted until the compensation amount and the alternate plot is surrendered. Counsel for the petitioners agree that the land owners who have received compensation or have been allotted

alternate plots would surrender the same as indicated above within two months from today. All other land owners who have their lands the way they like and their possession will not be disturbed by the respondents. Delhi Administration will see to it that the Revenue records are amended accordingly. The proper authority i.e. the Land Acquisition Collector will receive the refund of compensation with 12 per cent interest per annum as well as the surrender of the alternate plots when and if offered. The writ petitions are disposed of in these terms.”

The matter was taken to the Supreme Court and the same was disposed of by a judgment reported in (1997) 5 SCC 430, whereby the appeals preferred by the Delhi Development Authority and Union of India and others were dismissed. The order of the High Court was, therefore, not disturbed.

4. The learned counsel for the petitioners submitted that consequent upon the said decision, the compensation amount had been returned to the respondents on 11.07.1989 itself. The learned counsel for the Land Acquisition Collector had taken time to verify as to whether, as per the record, compensation has been returned or not. Mr Yeeshu Jain, the learned counsel appearing on behalf of the Land Acquisition Collector, submits that despite their best efforts, there is no record available with

them from which they could verify that the said amount had been received by the Land Acquisition Collector. However, the learned counsel for the petitioner drew our attention to the document at page 306 (serial No. 7) (the typed copy of which is found at page 312) which indicates that in respect of these three khasra numbers, an amount of Rs 3,87,360/- had been refunded by virtue of cheque No. 361656 on 11.07.1989. But, as Mr Yeeshu Jain has submitted that he was unable to verify encashment of the said cheque, the learned counsel for the petitioner has submitted that he is willing to deposit the said amount twice over along with interest which, according to him, as on 30.11.2016 comes to Rs 16,61,774/-. The same shall be deposited with up to date interest within two weeks with the concerned Land Acquisition Collector. The said deposit would be without prejudice to the rights of the petitioner to claim back the said amount in case the verification of the earlier refund is done at a subsequent date.

5. As such, the immediate corollary is that the petitioner has not received any compensation inasmuch as whatever it had received earlier had been returned pursuant to the directions of this Court alongwith interest.

6. Therefore, without going into the controversy of the physical possession in respect of the said three khasra numbers, the Award having been made more than five years prior to the commencement of the 2013 Act, and the compensation not having been paid, as indicated above, 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 learned counsel for the respondents had also raised the objection that the present petition would not be maintainable because the petitioner is a subsequent purchaser. Though, under the 1894 Act, the Supreme Court has held that a subsequent purchaser would not have a right to challenge the acquisition and would only have a right to compensation, in the present petition the challenge is not to the acquisition proceedings but, the petition is one whereby a declaration is being sought of rights which accrued to the petitioner by virtue of the deeming provision of Section 24(2) of the 2013 Act. Once the acquisition has lapsed because of the triggering 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 he is a subsequent purchaser.

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

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

DECEMBER 09, 2016
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