

\$~33

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 25.04.2016

+ W.P.(C) 3740/2015 & CM 6679/2015

SHASHI KANT GOENKA

... Petitioner

versus

UNION OF INDIA & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sumit Bansal with Ms Richa Oberoi
For the Respondent UOI : Mrs Bharathi Raju
For the Respondent L&B : Mr Yeeshu Jain and Ms Jyoti Tyagi
For the Respondent DDA : Ms Niharika Ahluwalia

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 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.

15/1987-88 dated 05.06.1987 was made, *inter alia*, in respect of the petitioner's land, comprised in Khasra No. 2/2 measuring 1 bigha and 3 biswas in all in Village Chattarpur, New Delhi, 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. 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 the treasury.

4. 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.

5. 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.

6. It is also contended on behalf of the respondents that the land in question is Gaon Sabha land. However, the learned counsel for the petitioner has drawn our attention to the additional affidavit dated

31.03.2016 filed on behalf of the petitioner where it has been clearly stated that the proceedings under section 81 of the Delhi Land Reforms Act, 1954 have been dropped by virtue of the order dated 28.07.2014 passed by the Revenue Assistant/SDM, Saket Division: District South. It is also stated in the additional affidavit that the Gaon Sabha has preferred an appeal against this order dated 28.07.2014 and the said appeal is pending before the Deputy Commissioner Saket. In view of this, we are making it clear that we are not pronouncing on the title insofar as the land is concerned. It either belongs to the petitioner or the Gaon Sabha and that shall be decided in the proceedings which are now pending before the Deputy Commissioner (Appeal). Subject to that, the acquisition has lapsed.

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

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

APRIL 25, 2016

kb