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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.02.2016

+ **W.P.(C) 8475/2014 & CM 19609/2014**

FARHANA SARFRAAZ

... Petitioner

versus

UNION OF INDIA & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioner	: Ms Richa Oberoi
For the Respondent UOI	: Mr Abhay Prakash Sahay
For the Respondent L&B	: Mr Sanjay Kumar Pathak with Mr Sunil Kumar Jha and Ms Shreya
For the Respondent DDA	: Mr Dhanesh Relan with Mr Arush Bhandari

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 the Award No. 13/87-88 dated 20.05.1987 was made, inter alia, in respect of the petitioner's land comprised in khasra number 239 (1-5) to the extent of only 400 Sq. Yds. in village Saidulajab, Delhi, shall be deemed to have lapsed.

2. It is claimed by the petitioner that the physical possession of the subject land has not been taken by the land acquiring agency. However, the learned counsel for the respondent contends that the possession was taken on 17.07.1987. At best it can be stated that the question of physical possession is disputed. Insofar as the compensation is concerned, it is the case of the petitioner that the same has not been paid to them whereas it is the case of the respondents that the said compensation was deposited in court pursuant to an order passed by a Vacation Judge of this court in C.M.(Main) 1392/2013 passed on 30.12.2013. By virtue of that order, the said C.M.(Main), amongst others, was disposed of by recording that without prejudice to the rights and contentions of the land holders the cheque tendered in each petition would be treated as tendered to the court of the learned Additional District Judge, Delhi as of that date i.e. 30.12.2013. According to the respondents this amounts to payment of compensation. However, this issue has already been settled by a decision of this court in **Gyanender Singh & Ors v. Union of India & Ors.** WPC 1393/2014 decided on 23.09.2014 wherein this court held that unless and until the compensation was tendered to the persons interested, mere deposit of the compensation in court would not be sufficient. The

compensation cannot be regarded as having been paid merely on the deposit of the same in court unless and until it has first been offered to the person interested and he has refused to accept the same. In the present case, it is an admitted position that the compensation amount was tendered in this court in the said C.M (Main) 1392/2013 without first being offered to the petitioner herein. Therefore the same, following the decision in **Gyanender Singh** (*supra*), cannot be regarded as compensation having been paid to the petitioner.

3. In these circumstances, while the question of physical possession is disputed, it is clear that compensation has not been paid to the petitioner. The award was made more than five years prior to the commencement of the 2013 Act. All the ingredients necessary for the applicability of section 24(2) of the 2013 Act, as interpreted by the Supreme Court and this court in the following decisions, stand satisfied:-

- (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
- (iv) **Surender Singh v. Union of India & Others:** WP(C) 2294/2014 decided on 12.09.2014 by this Court; and
- (v) **Gyanender Singh & Ors v. Union of India & Ors:** W.P.(C) 1393/2014.

4. The learned counsel for the respondents further submitted that the present petition is not maintainable because the petitioner is a subsequent purchaser. While it is true that, in the context of the 1894 Act, the Supreme Court has held that the subsequent purchaser would not have a right to challenge the acquisition and would only have a right to compensation, we are of the view that the present petition, as it now stands is not a challenge to the acquisition proceeding but a petition seeking declaration of rights which had 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 she is a subsequent purchaser.

5. 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.

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

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

FEBRUARY 08, 2016

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