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

% Judgement delivered on: 11th April, 2017

+ **W.P.(C) 2675/2015 & CM No.4779/2015**

SUBHASH SAWHNEY

..... Petitioner

Through : Counsel for petitioner. (Appearance
not given).

Versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through : Mr.Sanjay Kumar Pathak, Advocate
for LAC/L&B/GNCTD with
Mr.Sunil Kumar Jha, & Mr.Kushal
Raj Tater, Advocates.
Mr.Vaibhav Agnihotri and Mr.Preet
Singh Oberoi, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. (Oral)

1. The petitioner is a recorded owner of land admeasuring 15 bighas and 10 biswas comprised in khasra Nos.333, 342 (4-16) and 343 (4-16) which later on changed to new Khasra Nos.28/12 (4-16), 28/19(4-16), 28/22(4-16) and 35/2 (1-2), situated in the revenue estate of Village Bamnauli, Tehsil Mehrauli, Delhi. The said land was purchased through two separate registered sale deeds both dated 18.09.2001. The petitioner obtained the permission from MCD for

construction on the land and it was granted vide sanction No.137/A/HQ/24/02/AE(B) HQII dated 02.01.1985. The completion certificate dated 24.11.1987 was also issued.

2. However, a notification bearing No.F.9(50)/04/L&B/LA/13211 dated 04.11.2004 under Section 4 of the Land Acquisition Act, 1894 was issued notifying the land in question required for public purpose namely 'Planned Development of Delhi'. The, respondent No.1 on 31.10.2005 further issued a notification bearing No.F-9 (50)/04 /L&B/LA/9450 under Section 6 of the Act. The respondent No.2 then passed an award bearing No.1/2007-08 on 06.08.2007 pursuant to the above notifications.

3. It is alleged by the petitioner that till date neither any compensation has been paid to him nor deposited in the Court as is mandated under Section 31 of the old Act. Further, the petitioner alleges to be in continued actual physical and effective possession of the land in question till date, hence it is alleged that in view of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the acquisition of the subject land be declared to be lapsed.

4. The respondent Nos.1 & 2 in their counter affidavit dated 03.02.2017 of Shri Pranjal J. Hazarika working as Land Acquisition Collector (South-West) Delhi admitted the notifications issued and the award having been passed. The relevant portions of counter affidavit reads as under:-

“8. That vast tract of land including the land comprised in Khasra Nos.28/12 (4-16), 28/19 (4-16), 28/22 (4-16) and 35/2 (1-2) total admeasuring 15, bigha 10 biswa situated in the revenue estate of village Bamnoli, New Delhi was notified for acquisition for public purpose vide notification dated 04.11.2004 issued under Section 4 of the Old Act followed by declaration issued under section 6 issued on 31.10.2005 and pursuant to which an award being Award No.1/2007-08 was also made on 06.08.2007 with respect to the acquired land including the land of the petitioner.

9. That as regards status of possession and compensation, it is humbly submitted that, the possession of the subject land comprised in khasra Nos. 28/12 (4-16), 28/19 (4-16), 28/22 (4-16) and 35/2 (1-2) could not be taken due to stay in W.P.(C) No. 2140/2007 titled as Subhas Sahwney Vs. UOI &Ors. So far as compensation amount is concerned it is humbly submitted that compensation amount could not be paid.”

5. Thus, the respondents though alleged that possession could not be taken on account of the stay in Writ Petition (C)No.2140/2007, but also did not deny that the compensation was never paid to the petitioner.

6. Thus in the circumstances, the Court is the opinion that the relief claimed has to be granted in view of the decision in *Pune Municipality Corporation & Anr. V. Harakchand Misirimal Solanki & Ors.* (2014) 3 SCC 183 wherein the Supreme Court has held as under:-

“under section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are

deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under section 24 (2) comes into operation as soon as conditions stated therein are satisfied, the applicability of section 6 of the General Clauses Act being subject to section 24 (2), there is no merit in the contention of the corporation (emphasis supplied)”

7. Further, in *Bharat Kumar Vs. State of Haryana & Ors* 2014(3) SCALE 393, Supreme Court also held as under:-

“Sub-section (2) of section 24 commences with a non-obstante clause. It is a beneficial provision. In view of this provision, if the physical possession of the land has not been taken by the acquiring authority though the award is passed and if the compensation has not been paid to the land owners or has not been deposited before the appropriate forum, the proceedings initiated under the act, 1894 is deemed to have been lapsed.”

8. Thus, as the appropriate government has not denied that the compensation is not disbursed to the petitioner, so in line with the decision in *Pune Municipality* (supra) the relief claimed needs to be granted. The declaration is issued that the acquisition of the land admeasuring 15 bighas and 10 biswas comprised in khasra Nos.333, 342 (4-16) and 343 (4-16) which later on changed to new Khasra Nos.28/12 (4-16), 28/19(4-16), 28/22(4-16) and 35/2 (1-2), situated in the revenue estate of Village Bamnauli, Tehsil Mehrauli, Delhi, has therefore lapsed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013.

9. The writ petition and pending miscellaneous application are allowed in the above terms.

YOGESH KHANNA, J

S. RAVINDRA BHAT, J

APRIL 11, 2017
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