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

% Judgement delivered on: 11th April, 2017

+ **W.P.(C) 2729/2015 & CM No.4897/2015**

ROMILLA 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.Nikhil Rohatagi and Mr.Mohit Khubchandani, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S.RAVINDRA BHAT, J. (Oral)

1. The petitioner is an owner of the land admeasuring 14 bighas and 4 biswas comprised in Khasra Nos.5/25/3(0-5), 28/11(4-16), 28/20 (4-16) and 28/21(4-7), situated in the revenue estate of Village Bamnauli, Tehsil Mehrauli, Delhi being purchased by her through three registered sale deeds—two of which were registered on 18.09.1981 and the third one is dated 17.11.1981.

2. The petitioner alleged that she was granted permission from the MCD to construct a farm house on the said land and the same was

constructed as per sanctioned plan and even a completion certificate 22.09.1987 was issued to her. It is also stated that the petitioner is in peaceful possession of the said land till date.

3. It is alleged that 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 07.06.1985 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.

4. It is the case of the petitioner that neither was any compensation disbursed to her nor the possession of the subject land taken by the appropriate government till date. Therefore, per Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the Act"), the notification be declared to have been lapsed.

5. The first two respondents in the counter affidavit of the 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.5/25/3 (0-5), 28/11 (4-16), 20(4-16), and 21(4-17) and 35/2 (1-2) total admeasuring 14, bigha 4biswa 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 as per possession of the subject land could not be taken due to stay in W.P.(C) No. 2143/2013 titled as Romilla Swahney Vs. UOI & Ors. As regards compensation it is humbly submitted that compensation **could not be paid.**”*

6. The respondents however alleged that possession could not be taken on account of the stay in Writ Petition (C) No.2143/2007, but admitted that the compensation was never paid to the petitioner.

7. This Court is the opinion that in the circumstances 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 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)”

8. 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.”

9. Here the appropriate government has not denied that the compensation was not disbursed to the petitioner. Consequently, in line with the decision in *Pune Municipality* (supra) the relief claimed needs to be granted. The declaration is thus issued that the acquisition of the land admeasuring 14 bighas and 4 biswas comprised in Khasra Nos.5/25/3(0-5), 28/11(4-16), 28/20 (4-16) and 28/21(4-7), situated in the revenue estate of Village Bamnauli, Tehsil Mehrauli, Delhi, therefore stood lapsed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

10. Consequently, the petition and pending miscellaneous application are allowed.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 11, 2017/M