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

Date of Decision: September 13, 2017

\+   W.P.(C) 8105/2013 & C.M. 14605/2016

KRISHNA GUPTA & ORS. ..... Petitioners

Through: Mr. B.S. Maan, Ms. Sunita Mann, Mr. Paritosh Tomar, Mr. S. Rathee & Mr. Naresh Mann, Advocates

Versus

LAND ACQUISITION COLLECTOR (S) & ORS. ... Respondents

Through: Mr. Sanjay Kumar Pathak, Ms. Koumudi Kiran Pathak, Mr. Sunil Kumar Jha & Mr. Kushal Raj Tater, Advocates for LAC/ L & B

Mr. M.U. Khan, Advocate for respondent No.2-DMRC

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUNIL GAUR

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The controversy in these proceedings is whether petitioners' claim for enhanced compensation in terms of Proviso to Section 24 (2) of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (hereinafter called as 'the Act of 2013') is warranted.

2. The facts necessary to decide the dispute are that in respect of the

lands in question (hereinafter referred to as the suit lands), measuring 2 bighas 8 biswas [comprising in new Khasra No.299 (1-16)/ Old Khasra No.2796/1096/3 and New Khasra No.304 (0-12) / Old Khasra No.2795 /1096 /2, situated in Village- Mehrauli, New Delhi], a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter called as "the old Act") was issued on 05.09.2011. The subsequent declaration under Sections 6 and 17(1) of the old Act was made on 12.09.2011 in view of the urgency expressed for the acquisition of land i.e. for the purpose of construction of the metro line by Delhi Metro Rail Corporation (DMRC). The DMRC i.e. the concerned Corporation, which had sought the land, had deposited 80% of the estimated compensation, with the Collector on 8th September, 2011. After considering the rival submissions based upon the materials made available, the Collector announced the Award on 05.09.2013. The pleadings indicate that the awarded amount or the balance of what was necessary to satisfy the determined amount, was deposited with the Collector by the DMRC on 8th October, 2013. The petitioners contend that till date, they have not been paid awarded compensation nor it has been deposited in their accounts, despite determination. They consequently invoked the Proviso to Section 24(2) of the Act of 2013 to claim higher compensation in terms thereof. The respondents, especially the DMRC, contend that the claim in these proceedings cannot be granted as it involves disputed questions of fact. According to DMRC, whether petitioners represent majority of the land owners, is one of the principal questions that require determination and cannot be gone into in writ proceedings.

3. It is further contended that the moment the amounts determined

were deposited with the statutory authorities in accordance with the provisions of law then prevailing, DMRC was absolved of any liability to pay any further amount. It was therefore, submitted that the obligation to pay the enhanced compensation does not arise.

4. The Appropriate Government i.e. Government of NCT of Delhi objects to the grant of relief by reiterating that the amounts were deposited by the DMRC pursuant to the Award and that the petitioners were aware of this fact. It is further submitted that the urgency clause was invoked; 80% of the amount was deposited as a pre-condition for taking over the possession on 08.09.2013 itself. In these circumstances, it is contended that the relief of higher compensation is not justified.

5. Section 24 of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* reads as follows: -

> "*24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—*
>
> > *(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*
> >
> > *(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*
>
> *(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the*

compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

6. The effect of Proviso to Section 24 of the Act of 2013 and whether it applies to Section 24 (2) of the Act of 2013 or the main part i.e. Section 24(1)(b) of the Act of 2013, has been considered by this Court in *Tarun Pal Singh and Anr.v. Lt. Governor, Govt. of NCT of Delhi & Ors.,* 2015 SCC Online Del 9789. The court pertinently held as follows: -

"6. It is evident that under section 24(1), two situations are set out. One where no award has been made under section 11 of the 1894 Act and the other where an award has been made under section 11 of the said Act. Insofar as the latter case is concerned, section 24(2) provides an exception and it begins with a non-obstante clause. In other words, in cases where Awards have been made under section 11 of the 1894 Act, another sub-category of Awards has been carved out by virtue of section 24(2) and those relate to Awards which had been made more than five years prior to the commencement of the 2013 Act, that is, more than five years prior to 01.01.2014. In such cases, that is, where the Awards have been made more than five years prior to the commencement of 2013 Act, if physical possession of the land in question has not been taken or compensation has not been paid, the acquisition proceedings are deemed to have lapsed. [see:

(i) Pune Municipal Corporation and v. Harakchand Misirimal Solanki: (2014) 3 SCC 183; (ii) Union of India v. Shiv Raj: (2014) 6 SCC 564; (iii) Sree Balaji Nagar Residential Association v. State of Tamil Nadu: Civil Appeal No. 8700/2013 decided on 10.09.2014; and (iv) Surender Singh v. Union of India: W.P.(C) 2294/2014 decided 12.09.2014 by this Court].

7. It is, therefore, clear that in those cases where the Awards have been made more than five years prior to the commencement of the Act, section 24(2) would have applicability, subject to the other conditions being fulfilled. But, in cases where the Awards have been made within five years of the commencement of the 2013 Act, section 24(2) would not apply. It is also clear that once the conditions of section 24(2) are met, the acquisition itself lapses and therefore no occasion would arise for invoking the first proviso which is set out after section 24(2). This is so because the first proviso entails a situation where the acquisition is saved but the compensation is awarded under the 2013 Act. The proviso cannot blow life into the acquisition which has lapsed under the main provision of sub-section (2) of Section 24 of the 2013 Act. It is for this reason that we think that the first proviso which has been placed after section 24(2) is not really a proviso to section 24(2) but, a proviso to Section 24(1)(b). The said first proviso and Section 24(1)(b) can easily be read together. Section 24(1)(b) in effect relates to all cases where awards have been under the 1894 Act except those which are covered under Section 24(2). Clearly, awards made less than five years prior to the commencement of the 2013 Act would fall under Section 24(1)(b). As such, the general rule in such cases is that the provisions of the 1894 Act would continue to be applicable, as if the 1894 Act had not been repealed. However, the said first proviso carved out an exception to this general rule by providing that in cases where compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the *notification for acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. This is a provision for the benefit of landowners inasmuch as even in cases of completed acquisitions, if the conditions stipulated under the said first proviso stand satisfied, the compensation would have to be provided under the more beneficial provisions of the 2013 Act.*

8. Thus, while the said first proviso can harmoniously exist when read as a proviso to Section 24(1)(b), it cannot so exist when sought to be read as a proviso to Section 24(2) of the 2013 Act."

7. The decision in *Tarun Pal Singh (supra)* was subsequently followed by this Court in W.P.(C) 5095/2014, M/S Inspiration Engineer Pvt. Ltd. & Ors. v. Union of India & Ors., decided on 01.03.2016 and was also followed in a recent judgment in W.P.(C) No. 4289/2013*, Shiv Charan Vs. UOI & Ors.,* decided on 21.08.2017. We also notice that the view in *Tarun Pal Singh (supra)* is the same as that of Full Bench of Bombay High Court and that of Division Bench of the Karnataka High Court.

8. In these circumstances, the law now stands as has been interpreted by Division Benches of this Court in previous rulings, that if the compensation amounts are not deposited in the account of the majority of the beneficiaries in respect of the Award, they would be entitled to higher compensation in terms of Act of 2013.

9. In the facts of this case, what transpires from the pleadings of this case are that the DMRC deposited the compensation—on an estimated 80% basis on 08.09.2011; after determination, the balance of the determined compensation was deposited on 08.10.2013. However, the

deposit was made with the Appropriate Government, which then seems to have not deposited or paid the amounts to the concerned land owners i.e. those whose lands were acquired. The plain terms of the Proviso to Section 24 of Act of 2013 provides that the authorities are to deposit "in the account of beneficiaries" the amount determined as compensation. Clearly, that eventuality has not been fulfilled since no amount was deposited in the account of any beneficiary of the concerned Award, i.e. the one which dealt with the land to the entire extent of 2 Bighas 8 Biswas.

10. In these circumstances, it is declared that the petitioners are entitled to higher compensation, as on 01.01.2014, to be determined afresh. The process of determination afresh compensation in accordance with the provisions of 2013 Act shall be completed within six months from today. The concerned Collector shall issue notices to all the parties concerned under the relevant provisions of 2013 Act, within four weeks from today.

11. The writ petition is allowed in above terms. The pending application also stands disposed of.

S. RAVINDRA BHAT
(JUDGE)

SUNIL GAUR
(JUDGE)

SEPTEMBER 13, 2017
r