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

RESERVED ON: 20.07.2017

% **PRONOUNCED ON: 30.08.2017**

\+ **W.P.(C) 1103/2016**

MAHENDRA ..... Petitioner

W.P.(C) 1104/2016

DHARMVEER AND ORS ..... Petitioners

W.P.(C) 1112/2016

HARICHAND AND ORS ..... Petitioners

W.P.(C) 1114/2016

CHANDERMAL AND ORS ..... Petitioners

W.P.(C) 7126/2016

VINOD KUMAR & ORS ..... Petitioners

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Hara Prasad Sahu, Advocate with Mr. Shiv Kant Mishra & Mr. Kamlesh K. Mishra, Advocates for the petitioners.

Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Advocate for L&B/LAC in W.P.(C)1103, 1114 & 7126/2016.

Mr. Sharan Thakur & Ms. Natasha Thakur, Advocates for DDA in W.P.(C) 1103, 1104, 1112 & 1114/2016.

Mr. Mukesh Sachdeva, Advocate for UOI in W.P.(C) 7126/2016.

Ms. Astha Tyagi, Advocate for L&B/LAC in W.P.(C)1104/2016.

Ms. Ruchika Rathi, Advocate for L&B/LAC in W.P.(C)1112/2016.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P. GARG

S.RAVINDRA BHAT, J.

1. Common questions of law arise for decision, in these writ petitions. They were heard separately because of the facts, but are disposed of through the present single judgment.

2. All writ petitioners were either original landowners or are their heirs. They claim identical relief in these proceedings, i.e. for directions to the respondents to determine and pay the compensation to the petitioners in terms of provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter "the Act"). The lands involved in all the cases are located at Village Aali, *Tehsil* Mehrauli District Delhi. The petitioners in W.P. 1103/2016, claim ownership of 45/1 (2-8), 146 (4-16) total measuring of land area 7 Bighas. The petitioners in WP 1104/2016 claim ownership of Khasra Nos. 45/1 (0-5), 46/1(1 -5), 47(1-3), 48 (3-13), 49(1 -5), 50 (4-00), 51 (0-17), 52 (3-19), i.e. total measuring of land area 16 Bighas 7 biswa. The petitioners in WP 1114/2016 claim ownership of Khasra Nos. 43(6-4), 44 (4-00) 140(7-8), 147(7-10), 148(7- 17), 150 (3-1), 152/2 (2-8), 153/2(2- 8), 154(3-00) 157(4-16) total measuring of land area 48 Bighas 12 biswa. The petitioners in WP 1112/2016 claim ownership of Khasra Nos.152/1(2 -8), 153/1(2 -8), 158/1(4- 2), 159/2(0-18), 164/1 (3-00) total measuring of land area 12 Bighas 16 biswa of lands. In WP 7126/2016, the petitioners claim ownership of Khasra Nos.37/1(1 - 16), 38/1 (00 -18),

142/2(2-12), 39(3-17), 40/2 (2-16) and 143(4-16), total measuring of land area 16 Bighas 15 biswa. These lands shall hereafter be referred to as "suit lands". These lands were notified under Section 4 of the Land Acquisition Act, 1894 ("the old Act" hereafter) on 16.04.1964. The declaration under Section 6 of the old Act was made on 22.12.1966. Apparently, due to long drawn out proceedings pending in courts that concerned challenges to the acquisition, awards were made under the old Act; the one dealing with suit lands (Award No. 3) was made on 05.12.1997. A corrigendum to the award, was issued on 10.12.1997.

3. According to the pleadings of the parties, there is no dispute that possession of the suit lands (as well as large tracts of other lands, that were acquired) were taken over *inter alia,* on 26.05.1998. The petitioners, as well as other land owners were paid the compensation based on market value assessment of the acquired lands.

4. The petitioners argue and claim that by virtue of proviso to Section 24 of the Act, which came into force on 01.01.2014, they are entitled to compensation under the new *regime,* i.e., the 2014 Act, because majority of the land owners (whose properties were subject to acquisition) have not, so far, been paid compensation. The basis for this argument is the structure of Section 24, especially the proviso to Section 24 (2). It is contended that on a plain reading of the text of the provision, though petitioners have received compensation and have been dispossessed of their lands, fresh compensation determination under the new Act is necessary.

5. Mr. Shiv Kant Mishra, learned counsel argues that the petitioners are entitled to the benefit of proviso to Section 24 (2) and resultantly, the higher compensation under the new Act. It is argued that the provision clearly directs the grant of compensation under the new Act to all the beneficiaries specified in the Section 4 notification issued under the old Act, if the compensation for the majority of land holders is not deposited in their account. It is submitted that though the Award was made on 05.12.1997, the compensation in respect of the majority of landholders was not deposited in the account of the beneficiaries. It is stated that in view of the provisions of section 24 of the Act of 2013, the petitioners would be entitled to receive compensation under the new Act. On a plain reading and interpretation of the said provision, the court should hold that the petitioners are entitled to increased compensation, regardless of whether they were given compensation under the old law.

6. The respondents, represented by Mr. Yeeshu Jain, on the other hand argued that the decision in *Pune Municipal Corporation* v. *Harakchand Misirimal Solanki* in (2014) 3 SCC 183 by the Supreme Court considered the question of lapsing of proceedings initiated under the old Act, after the 2013 Act was brought into force with effect from 01.01.2014. The court held that if either compensation is not paid or possession of the acquired lands is not taken, the acquisition would be deemed to have lapsed. Mr. Jain submits that the proviso to Section 24 of the new Act, cannot be

characterized as relating to Section 24 (2); rather, it pertains to Section 24 (1) (b).

7. Section 24 reads as follows:

> *"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases –*
>
> *(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 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.

Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any designated account maintained for this purpose shall be excluded."

8. A Division Bench of this court, in its previous ruling in *Tarun Pal Singh and Anr Vs. Lt. Governor* 2015 SCC OnLine Del 9789 observed as follows:

"…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.

9. In Sree Balaji Nagar (supra) while dealing with the said first proviso after Section 24(2) of the 2013 Act, the Supreme Court observed as under:-

> *"11. …. There is nothing in the language of the proviso to restrict the meaning of the words used in Section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years' old but the physical possession of the land has not been taken over or the compensation has not been paid. The law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms, as held by Privy Council in the case of Madras and Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality AIR1944PC71and by this Court in the case of C.I.T. v. Indo Mercantile Bank Ltd. AIR1959SC713"*

10. In Surender Singh (supra) this Court also had occasion to deal with submissions with regard to the said first proviso. This Court observed as under:

> *"7. ....Furthermore, the proviso after Section 24(2) of the 2013 Act does not, in any manner, restrict the meanings of the words used in Section 24(2) which clearly mandate that the proceedings shall be deemed to have lapsed if the award has been made five years or more prior to the commencement of the 2013 Act but the physical possession of the land has not been taken over or the compensation has not been paid. The Supreme Court in Sree Balaji Nagar (supra) specifically dealt with the proviso and came to the above conclusion and in doing so also noted that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms.*
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> *8. Mr Sanjay Poddar, senior advocate, appearing for the Land Acquisition Collector, sought to distinguish the Supreme Court decision in Pune Municipal Corporation (supra) by contending that the question before the Supreme Court in that case was limited to the expression 'compensation has not been paid' as appearing in section 24(2) of the 2013 Act. We are afraid we cannot read any such limitation into the clear and unequivocal observations of the Supreme Court which have been set out above. Moreover, the same have been reiterated and reinforced by the Supreme Court in its subsequent decisions in Shiv Raj (supra) and Sree Balaji Nagar (supra).*
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> *9. Mr. Poddar also sought to contend that the proviso after section 24(2) of the 2013 Act ought to be construed as a saving clause. If so construed, the proviso saves the position existing on the commencement of the 2013 Act, implying thereby that if the majority of the landholders have received the compensation then the 1894 Act would*

apply. If not, then all would be entitled to compensation under the 2013 Act. Such an argument has to be stated to be rejected as it runs contrary to the clear provisions of deemed lapsing contained in section 24(2) of the 2013 Act. As held in Sree Balaji Nagar (supra) "there is nothing in the language of the proviso to restrict the meaning of the words used in section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years' old but the physical possession of the land has not been taken over or the compensation has not been paid."

10. Mr. Rakesh Khanna, senior advocate, appearing on behalf of the DDA sought to argue that the proviso would have to be considered even in cases which clearly fall within Section 24(2) of the 2013 Act because there is a colon which separates the main part of Section 24(2) and the proviso. It was contended that the proviso, therefore, has to be read as part of Section 24(2) and not as a proviso. We are afraid that this argument is also not available to the respondents in view of the clear conclusion of law set out by the Supreme Court in the case of SreeBalaji Nagar (supra). Even otherwise, the argument is merely to be stated to be rejected."

11. Coming back to the facts in the present petitions, we find that the Awards were made within the period of five years prior to the commencement of the 2013 Act. Clearly, section 24(2) does not apply. On the other hand, section 24(1)(b) would apply. But, the exception carved out by the first proviso which has been placed after section 24(2) would also apply. This is so because compensation in respect of the majority of land holdings has not been deposited in the account of the beneficiaries. This is an admitted fact. The consequence of this would be that all the beneficiaries which include the petitioners herein who have been specified in the notification under section 4 of the 1894 Act would be entitled to compensation in accordance to the provisions of the 2013 Act. It is held accordingly."

9. A similar reasoning was echoed by a Full Bench of the Bombay High Court in *Dayaram Bhondu Koche & Ors v State of Maharashtra &Ors* AIR 2017 Bom 52 where it was observed as follows:

> *"5. The provision of clause (a) of sub-section (1) of section 24 clearly spells out the intention of the Legislature to apply all the provisions of the 2013 Act only in relation to the determination of compensation where no award has been made under section 11 of the 1894 Act before coming into force of the 2013 Act. Similarly, the intention of the Legislature to continue to apply the provisions for determination of compensation under the 1894 Act where an award under section 11 of the 1894 Act has been made, is also clearly spelt out under clause (b) therein, and in such a case, the proceedings shall continue as if the 1894 Act has not been repealed. Thus, if no award is made under section 11 of the 1894 Act before commencement of the 2013 Act, the provisions of the 2013 Act in relation to the payment of compensation shall apply, and if an award under section 11 is passed prior to coming into force of the 2013 Act, the compensation payable shall be determined as per the 1894 Act, as if it is not repealed.*
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> *6. Sub-section (2) of section 24 deals only with the lapsing of proceedings initiated under the 1894 Act, leaving the choice of the appropriate Government open to initiate the proceedings of such land acquisition afresh in accordance with the provisions of the 2013 Act. This provision enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act, and either of the two contingencies is satisfied, viz. (i) that the physical possession of the land has not been taken, or (ii) that the compensation has not been paid, such acquisition proceedings shall lapse.*

7. The proviso below sub-section (2) of section 24 deals with a situation where in respect of acquisition initiated under the 1894 Act, 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 in section 4 notification become entitled to compensation under the 2013 Act.

8. The Scheme of section 24 of the 2013 Act need to be seen. The provisions of the 1894 Act are repealed by the 2013 Act with effect from 1-1-2014 and, therefore, it was necessary to take care of the land acquisition proceedings initiated under the 1894 Act, which were pending at different stages. Section 24 is enacted to take care of all such situations with an intention to balance the conflicting interest of the land holders and the State and it has been given overriding effect over all the provisions of the 2013 Act. Section 24 divides all such proceedings in three categories-

(A) the proceedings to which all the provisions relating to the determination of compensation under the 2013 Act shall apply, covered by clause (a) of sub-section (1),

(B) where the provisions of the 1894 Act relating to the determination of compensation shall apply, as contemplated under clause (b) of sub-section (1), and

(C) where the land acquisition proceedings initiated under the 1894 Act shall lapse in entirety in terms of sub-section (2) of section 24. Categories (A) and (B) are covered by sub-section (1), whereas category (C) is covered by sub-section (2). The provisions of sub-sections (1) and (2) operate in different fields. Sub-section (1) relates to applicability of the provisions of the 2013 Act for determination of compensation, whereas sub-section (2) deals with lapsing of land acquisition proceedings

initiated under the 1894 Act.

9. The provision of clause (b) of sub-section (1) of section 24 of the 2013 Act covers the cases where an award under section 11 of the 1894 Act was made within a period of five years prior to the commencement of the 2013 Act. The object of giving an overriding effect to the provision of sub-section (2) is to exclude the cases where an award under section 11 of 1894 Act was made within a period of five years prior to the date of commencement of the 2013 Act from lapsing of acquisition. The period of five years or more prior to the commencement of the 2013 Act, specified under sub-section (2) of section 24 of the 2013 Act, cannot, therefore, be imported or read in clause (b) of sub-section (1). The effect of such reading would be three-told, viz. (A) lapsing of the entire acquisition proceedings initiated under the 1894 Act upon establishing that the compensation in respect of a majority of land holdings has not been deposited in the account of beneficiaries, (B) the latter part of the proviso making the beneficiaries entitled to the compensation as per the 2013 Act shall become redundant, and (C) the protection provided to save lapsing of acquisition in its entirety shall be lost.

10. The proviso below sub-section (2) deals with the subject of applicability of the provisions of the 2013 Act relating to the determination of compensation covered by clause (b) of sub-section (1) of section 24 therein, subject to the satisfaction of condition that the compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries. In our view, the proviso has to be read as an exception to the provision of clause (b) in sub-section (1) of section 24 of the 2013 Act so as to advance the intention of the Legislature to strike the balance of conflicting interest between the land holders and the State, and to award a fair compensation."

10. This court is of the opinion that the location or positioning of the proviso, no doubt *prima facie* suggests that it is a “carve out” of a part of the field of Section 24 (2). However, location alone is not determinative. The scheme of the provision is such that Section 24 (1) lists out the eventualities; Section 24 (2) is an exception, only as regards matters provided for, i.e. where possession of land is not taken or where compensation is not “paid”. Significantly the statutory fiat of lapsing of the acquisition is followed by the words *“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”.* These suggest Parliamentary intent that as regards the field of lapsing of acquisition, Section 24 (2) is a complete provision. So viewed, the conclusions of the Bombay High Court in *Dayaram Bhondu Koche (supra)* and of this court, in *Tarun Pal Singh* (supra) were sound. This court, therefore agrees with the observations made in those judgments.

11. In the present petitions, possession of the lands was taken nearly two decades ago; compensation too was determined and paid at that time. If the petitioners’ contentions were to be accepted, there would be no finality to the exercise of compensation determination, because in every case, the court would be requiring the acquiring authorities to satisfy it about when and to what extent landowners were paid their adjudicated compensation. In the present case, the respondents have also averred that all land owners who had laid claim to compensation and participated in the proceedings, were paid the sums due to them

and that in respect of others, compensation was determined. Having regard to the opinion expressed in the preceding portions of this judgment, these petitions are to fail, inasmuch as proviso to Section 24 (2) would not apply. All writ petitions, with pending applications are therefore, dismissed without order on costs.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

AUGUST 30, 2017