* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 28th November, 2017*

\+ W.P.(C) 4339/2017

RANI DAHIYA ..... Petitioner

Through: Mr. Sunil Dahiya, Adv. and Mr. I.S. Dahiya, Adv.

versus

UOI AND ORS ..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel for L&B/LAC
Mr. P.S. Singh, Adv. with
Ms. Swati Bansal, Adv. for R-3
Mr. Arjun Pant, Adv. for DDA

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. This is a petition filed by the petitioner under Article 226 of the Constitution of India. Petitioner seeks a declaration that the acquisition proceedings with respect to the land of the petitioner comprised in Khasra No. 118/6/1 (1-02) and 15/3/1 (0-07) total measuring 1 Bigha 9 Biswas situated in the Village – Palam, New Delhi (hereinafter referred to as the subject land) would stand lapsed as neither possession of the subject land has been taken nor compensation paid.

2. Counsel for the petitioner also draws the attention of the Court to Paragraphs 8 and 9 of the counter-affidavit filed by the respondent / LAC to show that the compensation has not been paid to the recorded owner. Counsel for the petitioner relies on the judgment rendered by the Supreme

Court of India in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors (2014) 3 SCC 183*** in support of his submission that in view of the fact that compensation has not been paid, the acquisition proceedings with respect to the subject land would stand lapsed.

3. Counsel for the respondent / LAC submits that possession of the subject land has been taken over and the possession has been handed over to the beneficiary department for the purpose of road widening. He submits that in view thereof, the petitioner shall only be entitled to compensation in terms of the new Act.

4. Counsel for the petitioner does not dispute that not only possession of the land in question has been taken but even the land has been put to use for widening of the road. Counsel for the petitioner submits that in almost similar circumstances in the case of ***Inspiration Engineer Pvt. Ltd. & Ors. vs. Union of India & Ors.*** *reported in* ***228 (2016) DLT 481 (DB)*** wherein the land in question was acquired for the purposes of DMRC project, the possession was taken but the compensation was not paid, the court held that the case would not fall under Section 24(2) of the 2013 Act but under Section 24(1)(b) of 2013 Act and the petitioner would thus be entitled to compensation accordingly.

5. Reliance is placed on paras 13 to 15 of ***Inspiration Engineer Pvt. Ltd.*** *(supra)* which read as under:

> *"13. Having heard the rival submissions made on behalf of the parties, we are of the view that the petitioners did not challenge the acquisition in the first instance and this is evident from the fact that the petitioners made a demand for compensation on 25.04.2008. It is another matter that the compensation was not paid to the petitioners despite their demand. The fact remains that at the point of time when the acquisition proceedings had*

been initiated and when the Award had been made, the petitioners did not challenge the same. Furthermore, the physical possession of the land in question was admittedly taken on 31.03.2009 and has been utilized by the Delhi Metro Rail Corporation for its project. There is, therefore, no question of return of the land. It is in these circumstances that we feel that the petitioners are not in a position to raise grievances with regard to the acquisition per se on the basis of alleged non-compliance of Section 11A and Section 17(3A) of the 1894 Act. We are, therefore, not entering into this arena of dispute and, particularly, as to whether and which of the decisions in Laxmi Devi (Supra) or Satendra Prasad Jain (supra) would be applicable.

14. The more important issue that has been raised by the petitioners is the one pertaining to the proviso in Section 24 of the 2013 Act. In Tarun Pal Singh (supra), this Court had observed as under:- "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 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 decided on 10.09.2014; and (iv) Surender Singh v. Union of India and Ors.: 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."*

15. We may point out that in the above extract there is a reference to the 'first' proviso. That reference is to the proviso after Section 24(2) of the said Act. At the point of time when the decision in Tarun Pal Singh (supra) was rendered, there was *another proviso (the second proviso), which had been introduced into the said Act by virtue of an Ordinance. That Ordinance having lapsed, the second proviso is no longer there in the 2013 Act. The 'first' proviso referred to in Tarun Pal Singh (supra) is the surviving proviso in Section 24 of the said Act and the decision in Tarun Pal Singh (supra) is in respect of this proviso."*

6. Counsel for the DDA submits on instructions that the possession of the land has been taken and amount to be paid in compensation stands deposited on 10th November, 2003.

7. We have heard learned counsel for the parties. In this case, a notification under Section 4 was issued on December 07, 2000, Section 6 Notification was issued on April 30, 2001 and an Award was made on April 29, 2003.

8. Paras 8 and 9 of the counter-affidavit filed by the LAC read as under:

"8. That in the present case, the possession of land was taken over and handed over to the beneficiary department on 28.5.2003.

9. It is respectfully submitted that as per statement A compensation was not paid to the recorded owner."

9. Having regard to the submissions made that the possession of the subject land has been taken and put to use, the petitioner would be entitled to payment of compensation as per Section 24(2) of the 2013 Act as no compensation has been paid. Resultantly, the present writ petition is allowed. The acquisition proceeding qua the land of the petitioner comprised Khasra No. 118/6/1 (1-02) and 15/3/1 (0-07) total measuring 1 Bigha 9 Biswas situated in the Village – Palam, New Delhi stands lapsed. However, the case of the petitioner would fall under Section 24(2) of 2013 Act and under

Section 24(1)(b) of 2013 Act and petitioner would be paid compensation accordingly.

10. The writ petition is allowed in above terms.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 28, 2017/*aky*