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

% Judgement delivered on: 24th April, 2017

+ **W.P.(C) No.10136/2015 & CM No.24951/2015**

ANIL KUMAR GUPTA

..... Petitioner

Through : Ms.Deepika V. Marwaha &
Ms.Worthing Kasar, Advocates.

versus

GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI AND ORS.

..... Respondents

Through : Mr.Yeeshu Jain,
Standing Counsel with Ms.Jyoti
Tyagi, Advocates for L&B/LAC.
Mr.M.K.Singh, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S.RAVINDRA BHAT, J. (Oral)

1. Learned counsel for L&B/LAC seeks to tender the counter today in the Court. The same is hereby taken on record.

2. This petition is filed by the petitioner through a constituted attorney namely Ashwani Kumar. The petitioner claims to be an owner of the agricultural land admeasuring 1 bigha 12 biswas falling in Khasra No.1082 min, situated in revenue estate of Village Malikpur Kohi @ Rangpuri, Tehsil Vasant Vihar, Delhi which he purchased vide registered sale deed dated 11.01.1994 executed by one

Keshav Kumar for self and as an attorney of one Smt.Vimi Sethi. The petitioner has been in possession of the subject land and on 21.04.1995 it was mutated in his name in the revenue records at Tehsil Vasant Vihar, Delhi. The copy of the Khatoni is filed.

3. On 27.06.1996, notification No.F.9(12)/95-L&B/LA/9743 under Section 4 of the Land Acquisition Act was issued for acquisition of 1337 bigha and 04 biswas of land in village Malikpur Kohi @ Rangpuri, Tehsil Vasant Vihar, Delhi. Then a notification under Section 6 of the Land Acquisition Act, 1894 was issued. On 07.01.1999 an award bearing No.2/1998-99 was made by the respondent No.2 qua the land admeasuring 1333 bighas and 10 biswas of village Malikpur Kohi @ Rangpuri, Delhi, including the land of the petitioner.

4. It is the case of the petitioner that since after the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, a right has accrued in his favour since the respondents have neither taken the physical possession of his land nor have they paid any compensation, per award bearing No.2/1998-99.

5. It is also the case of the petitioner that on 05.10.2015 in Writ Petition (C) No.2051/2015 *Arvind Kumar Sharma vs. Government of NCT of Delhi & Ors* challenging the award bearing No.2/1998-99 dated 07.01.1999 pertaining to the land comprising in Khasra No.1255/4 in village Malikpur Kohi @ Rangpuri, the notification qua

the subject land was declared to have elapsed.

6. Respondent No.2 has filed the counter today and contents of para Nos.10 & 13 read as under:-

“10. That it is submitted that many of the land owners filed various writ petitions including the lead case Civil Writ Petition No.1953/1997 titled Vasant Kunj Enclave Housing Welfare Society Vs. Union of India & Ors before this Hon’ble Court for quashing of the Notifications dated 27.06.1996 issued by the Government of NCT of Delhi under Section 4 read with Section 17(1) and (4) dispensing with Section 5-A and Notifications dated 10.01.1997 issued under Section 6 of the Land Acquisition Act. In the said writ petitions, interim stay/status quo orders were passed in favour of the petitioners therein as early as on 16.12.1996. The said writ petitions lead case being WP(C)No.1953/1997 were disposed on 04.05.2012 whereby Section 6 & 17 was quashed qua the petitioners therein. Thereafter, the public notice issued by the answering respondent on 21.11.2012 inviting objections from interested persons under Section 5A of the Old Act were challenged in two writ petitions being WP (C) No.7795/2012 and WP (C) No.7802/2012 and the same was stayed vide interim orders dated 19.12.2012 and further, in WP (C) No.7802/2012 vide 11.10.2013 the parties were directed to maintain status quo. Aforesaid writ petitions i.e. W.P. (C) No.7795/2012 and W.P. (C) No.7802/2012 were dismissed as withdrawn on 05.11.2014 and 12.10.2015 with liberty to seek remedy individually by land losers. It is submitted that all the khasra Nos.except khasra No.1452 of the present petition were also subject matter of W.P. (C) No.7802/2012. Thus, interim order/stay with respect to the subject khasra Nos. remained in

force till 12.10.2015. Thus, acquisition proceedings against remained interdicted by interim orders of this Hon'ble Court.

13. That as regards possession, it is humbly submitted that the possession of the land in question could not be taken due to stay from this Hon'ble High Court. So far as compensation is concerned the compensation amount has not been received from requisitioning authority. Thus, the compensation amount could not be paid to the interested persons."

7. Hence, the respondents admit the possession of the land could not be taken because of a stay granted by this Court and that the compensation could not be paid since it was not received from the requisitioning authority.

8. In *Pune Municipal 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)"

9. Now, the question whether the period during which the acquisition proceedings were stayed could be excluded from the period so stipulated under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is still pending before the Supreme Court in a larger Bench in *Yogesh Neema vs. State of MP & Ors* SLP (C) No.10742/2008 vide order dated 12.01.2016. However, in *Sree Balaji Nagar Residential Association vs. State of Tamil Nadu* (2015) 3 SCC 353, the Supreme Court has held that if the possession could not be taken by the State for any reason including due to stay by court etc, the provisions of the Section 24(2) the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, would apply.

10. Since, admittedly the possession has not been taken over by the respondents and since the compensation has not been paid to the petitioner, so in view of the decision in *Pune Municipal* (supra) and the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioner is entitled to the relief prayed for.

11. Consequently, a declaration is issued that the acquisition of the land of the petitioner in respect of the aforesaid Khasra numbers has therefore lapsed in view of the above provisions. Consequently, the respondents are granted a year's time to take appropriate suitable action failing which they shall ensure that possession is restored to

the recorded owner.

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

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 24, 2017

M/RS

