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

% *Date of decision: October 30, 2017*

\+ W.P.(C) 11484/2015

DEEP KUMAR & ORS

..... Petitioners

Through: Mr. Ankit Verma, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Adv. for L&B/LAC

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

V. KAMESWAR RAO, J. (ORAL)

1. The petitioners seek a declaration that the acquisition proceedings in respect of land comprised in khasra nos. 9/4(4-16), 5(4-16), 6(4-16), 15(4-16), 26(0-05), 10/1(4-16) and 2(4-05) in all measuring 28 bighas 10 biswas situated within the revenue estate of village TikriKhurd, Delhi stands lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'New Act'), on the ground that despite Section 4 Notification having been issued on 23rd February, 2003 being notification No.F.11(92)/2004/L&B/LA/14103 and Section 6 Notification bearing No. F.11(92)/2004/L&B/LA/17513 was published on 22nd February, 2007 and award bearing No. 10/2008-09 having been announced in the year 2008, no compensation was paid to the owner.

2. Counsel relies upon the decision rendered in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., 2014 3***

SCC 183, in support of his submission that the acquisition in the present circumstances would lapse.

3. Counsel also relies on Para 6 of the counter-affidavit to show that the amount has not been tendered. The same reads as under:-

> *"6. That the present writ petition is liable to be dismissed as the possession of the lands which became the subject matter of the present writ petition was duly taken way back on 22.06.2011 with the entries in the revenue record, hence if the petitioners were aggrieved with the possession proceeding and/or acquisition proceedings, they would have challenged the same at appropriate time. Having laid no challenge to the acquisition proceedings reflects that the petitioners were never aggrieved of the acquisition proceedings. It is pertinent to mention here that for the subject lands of village TikriKhurd, the appropriate Government has allowed Special Rehabilitation Package besides the original compensation as granted by the LAC which SRP has been availed by maximum of the people whose lands were acquired and taken possession of vide the same notification. The petitioners/ recorded owner namely Sh. Arjun did not come forward to receive the compensation and/ or the Special Rehabilitation Package."*

4. Learned counsel for the respondents submits that the relief so prayed by the petitioners cannot not be granted, having regard to the fact that the award was made on 16th February, 2009 within five years prior to the commencement of the Act of 2013 i.e. on 1st January, 2014, the only relief which the petitioner would be entitled to, is compensation.

5. We have heard learned counsel for the parties.

6. A similar issue had come up for consideration in the case of ***Tarun Pal Singh & Anr. vs. Lt. Governor, Govt. of NCT of Delhi & Ors., W.P.(C) No.8596/2014, 2015 SCC OnLine Del 9789,*** wherein in paras 7 and 11, the Supreme Court of India held as under:

> *"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.

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."

7. We find force in the submission made by Mr. Yeeshu Jain, learned counsel appearing for the LAC. The present petitioners do not fall under Section 24(2) but fall under Section 24(1)(b), would be covered by the decision rendered in the case of ***Tarun Pal Singh & Anr. vs. Lt. Governor, Govt. of NCT of Delhi & Ors.,****(supra).*

8. Resultantly, the present petitioners are entitled to compensation under the New Act.

In above terms, the writ petition is disposed of.

V. KAMESWAR RAO, J

G.S.SISTANI, J

OCTOBER 30, 2017*/aky*