

(2015) 02 DEL CK 0138

In the Delhi High Court

Case No : Writ Petition (C) 8704/2014 and CM 20025/2014

AAS Mohammad and Others

APPELLANT

Vs

GNCT of Delhi and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2015) 148 DRJ 627 : (2015) 148 DRJ 527

Hon'ble Judges : Sanjeev Sachdeva, J.; Badar Durrez Ahmed, J.

Bench : Division Bench

Advocate : Ranjan Kumar, for the Appellant; Siddharth Panda, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Badar Durrez Ahmed, J.—Mr. Panda, the learned counsel appearing for respondent Nos. 1 and 2, has handed over the counter affidavit, which is taken on record. The learned counsel for the petitioners does not wish to file any rejoinder affidavit as all the necessary averments are contained in the writ petition itself.

2. By way of this writ petition the petitioners seek the benefit 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 2013 Act") which came into effect on 01.01.2014. The petitioners, consequently, seek a declaration that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") and in respect of which Award No. 10/87-88 dated 14.05.1987 was made, inter alia, in respect of the 1/3rd share of the petitioners' land comprised in Khasra Nos. 109 Min (2-08), 114 (4-16), 421 (4-16) and 450 (5-06) measuring 17 bighas and 6 biswas in all in Village Sayurpur, New Delhi shall be deemed to have lapsed.

3. The learned counsel for the petitioners claims that the physical possession of

the subject land has not been taken by the land acquiring agencies and that the petitioners continue to be in physical possession. This fact is, however, disputed by the learned counsel for the respondents, who states that the possession was taken over on 14.07.1987.

4. In so far as the question of compensation is concerned, the same has not been paid to the petitioner but according to the respondents, the same has been deposited in the treasury. Therefore, they seek to invoke the second Proviso to Section 24(2) of the 2013 Act, which was introduced by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 (hereinafter referred to as "the said Ordinance").

5. So far as the applicability of the second Proviso to Section 24(2) of the 2013 Act is concerned, the same cannot be relied upon by the respondents inasmuch as it has been held to be prospective in nature and does not take away vested rights. This has so been held by the Supreme Court in recent decision in M/s. Radiance Fincap (P) Ltd. and Ors. Vs. Union of India and Ors. decided on 12.01.2015 in Civil Appeal No. 4283/2011 wherein the Supreme Court held as under:-

"The right conferred to the land holders/owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid subsection without giving retrospective effect to the same." 6. The same has been reinforced by the Supreme Court in Karnail Kaur and Ors. Vs. State of Punjab and Ors. Civil Appeal No. 7424/2013 decided on 22.01.2015.

7. From the above decisions, it is evident that the said Ordinance is prospective in nature and the rights created in favour of the petitioners as on 01.01.2014 by virtue of the 2013 Act are undisturbed by the second Proviso to Section 24(2) of the 2013 Act, which has been introduced by the said Ordinance.

8. Without going into the controversy with regard to the physical possession, this much is clear that the Award was made more than five years prior to the commencement of the 2013 Act and the compensation has also not been paid to the petitioner, but has only been deposited in the treasury, which does not amount to payment of compensation as interpreted by the Supreme Court in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, .

9. All the necessary ingredients for the application of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following cases stand satisfied:-

(1) Union of India (UOI) and Others Vs. Shiv Raj and Others, ;

(2) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013 decided on 10.09.2014;

(3) Surender Singh v. Union of India and Others: WP(C) 2294/2014 decided on 12.09.2014 by this Court; and

(4) Girish Chhabra v. Lt. Governor of Delhi and Ors: WP(C) 2759/2014 decided on 12.09.2014 by this Court.

10. As a result, the petitioners are entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject land are deemed to have lapsed. It is so declared.

11. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.