

(2015) 04 DEL CK 0143

In the Delhi High Court

Case No : Writ Petition (C) 6688/2014 and C.M. 15872 of 2014

Dinesh Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

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

Citation : (2015) 219 DLT 567

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

Bench : Division Bench

Advocate : N.S. Vasisht, Vishal Singh, Jyoti Kataria and M.P. Bhargava, for the Appellant; A.U. Khan and Pooja, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Badar Durrez Ahmed, J.—The counter affidavit handed over by Mr. Sanjay Kumar Pathak on behalf of respondent Nos. 4 and 5 is taken on record. The learned Counsel for the petitioners does not wish to file any rejoinder affidavit inasmuch as, according to him, all the necessary averments are contained in the writ petition. 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 1.1.2014. 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. 14/87-88 dated 26.5.1987 was made, inter alia, in respect of the petitioners' land comprised in Khasra Nos. 252 (1-09) and 253/1 (5-13) measuring 7 bighas and 2 biswas in all in Village Satbari, Delhi shall be deemed to have lapsed.

2. 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 14.7.1987.

3. Insofar as the question of compensation is concerned, the same has not been paid to the petitioners 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").

4. 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. v. Union of India and Ors., decided on 12.1.2015 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 above said sub-section without giving retrospective effect to the same."

5. The same has been reinforced by the Supreme Court in Karnail Kaur Vs. State of Punjab(2015) 2 AD 429 : (2015) 1 RCR(Civil) 786 : (2015) 1 SCALE 598 : (2015) 3 SCC 206 : (2015) 2 SCJ 271 .

6. From the above decisions, it is evident that the said Ordinance is prospective in nature and the rights created in favour of the petitioner as on 1.1.2014 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.

7. 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 petitioners, 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, AIR 2014 SC 982 : (2014) AIRSCW 787 : (2014) 3 JT 283 : (2014) 1 RCR(Civil) 880 : (2014) 1 SCALE 618 : (2014) 3 SCC 183 .

8. 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, AIR 2014 SC 2242 : (2014) AIRSCW 3388 : (2014) 6 SCC 564 ;

(2) Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu, (2014) 10 SCALE 388 ;

(3) Surender Singh v. Union of India and Others, WP(C) 2294/2014 decided on 12.9.2014 by this Court; and

(4) Girish Chhabra v. Lt. Governor of Delhi and Ors., WP(C) 2759/2014 decided on 12.9.2014 by this Court.

9. The learned Counsel for the respondents also contend that the petition is not maintainable inasmuch as the petitioners are subsequent purchasers. The learned Counsel for the respondents submitted that it is settled law that a subsequent purchaser cannot challenge the acquisition proceedings and he is only entitled to seek compensation. They placed reliance on the Supreme Court decision in the case of K.N. Aswathnarayana Setty (D) Tr. L.Rs. and Others Vs. State of Karnataka and Others, (2014) 1 AD 461 : AIR 2014 SC 279 : (2014) 2 CTC 86 : (2013) 15 JT 194 : (2014) 1 RCR(Civil) 533 : (2013) 14 SCALE 565 : (2014) 1 SCJ 621 . A reference in this connection was also made to the Supreme Court decision in the case of Meera Sahni Vs. Lt. Governor of Delhi and Others, (2008) 106 CLT 909 : (2008) 8 JT 284 : (2008) 9 SCC 177 .

10. There is no doubt that in the context of the 1894 Act the Supreme Court clearly held that a subsequent purchaser would not have a right to challenge the acquisition and would only have a right to seek compensation. But, the position obtaining at present is different. This is a petition which does not seek to challenge the acquisition proceedings but seeks a declaration of a right which has ensured to the benefit of the petitioners by virtue of the operation of Section 24(2) of the 2013 Act. Once the acquisition is deemed to have lapsed because of the operation of the deeming provision of Section 24(2) of the 2013 Act, the benefit of the same cannot be denied to the petitioners on the ground that the petitioners are subsequent purchasers. This is, of course, provided that the conditions precedent for the application of the deeming provision contained in Section 24(2) of the 2013 Act are satisfied.

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