

(2015) 03 DEL CK 0149

In the Delhi High Court

Case No : Writ Petition(C) 7281/2014 and CM 17051/2014

Om Prakash

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

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

Citation : (2015) 03 DEL CK 0149

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

Bench : Division Bench

Advocate : Sumit Bansal, Ateev Mathur and Richa Oberoi, for the Appellant;
Vivek Goyal, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Badar Durrez Ahmed, J.—The petitioner seeks 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. A declaration is sought to the effect that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") in respect of which Award No. 15/87-88 dated 05.06.1987 was made, inter alia, in respect of the petitioner's land comprised in Khasra Nos. 1574 Min (2-08) , 1578 Min (1-15) , 1584/1-2 (4-16) , 1585/1-3 (4-16) , 1586 (4-16) , 1593/1 (0-10) , 1593/2 (0-3) , 1595 (4-16) measuring 24 bighas in all in village Chattarpur shall be deemed to have lapsed.

2. The stand of the respondents is that physical possession of the said land was taken on 01.08.2013. This is disputed by the petitioner, who claims to be in actual physical possession of the subject land.

3. It is stated by the respondents that insofar as the question of compensation is concerned, part of the same has been deposited pursuant to an order passed by the Vacation Judge of this court in CM Main No. 1411/2013 passed on

30.12.2013. Furthermore, part of the amount has been deposited in the Government Treasury. We have already held in several decisions that such deposit would not amount to the payment of compensation inasmuch as the same had not been offered or tendered to the land owners. The respondents, however, 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 the said Ordinance 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 sub-section without giving retrospective effect to the same."

5. 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.

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 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.

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 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, .

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, ;

(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.

9. As a result, the petitioner is 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.

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