

(2015) 08 DEL CK 0305

In the Delhi High Court

Case No : W.P.(C) 3447/2015 and CM 6158/2015

Soshil Kumar Jain and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

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

Citation : (2015) 152 DRJ 207

Hon'ble Judges : Badar Durrez Ahmed and Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Rachna Agrawal and Vinod Thakur, for the Appellant; Siddharth Panda, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—The counter affidavit handed over by Mr. Panda 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 all the necessary averments are contained in the writ petition.

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. 10/1987-88 dated 14.05.1987 was made, inter alia, in respect of the petitioners' land, comprised in Khasra Nos. 402 min (4-05), 399 min (4-0) and 409 min (3-15) measuring 12 bighas in all, in village Shaoorpur, New Delhi, shall be deemed to have lapsed.

3. In this case, it has been admitted by the concerned Land Acquisition Collector that physical possession of the subject land has not been taken. It is, however,

contended that the compensation was deposited in Court in CM (Main) No. 1407/2013 on 30.12.2013 pursuant to an order passed by this Court in the said matter. Insofar as the question of deposit is concerned, the same has already been considered by us in *Gyanender Singh & Ors. v. UOI & Ors.*- W.P.(C) 1393/2014 decided on 23.09.2014 wherein this court held that unless and until the compensation is tendered to the persons interested, mere depositing of the compensation in the court would not be sufficient and cannot be regarded as having been paid. Therefore, following the decision in *Gyanender Singh* (supra) the deposit in court, in this case cannot be regarded as compensation having been paid to the petitioners.

4. The learned counsel for the respondents placed reliance on the second proviso to Section 24(2) of 2013 Act, which has been introduced by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (hereinafter referred to as the "said Ordinance"). The newly added proviso reads as under:--

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any designated account maintained for this purpose shall be excluded."

(underlining added)

5. On a plain reading of the proviso, it is evident that its purpose is to compute the period of five years referred to in Section 24(2) of the 2013 Act. Certain periods are to be excluded in computing the said period referred to in Section 24(2) of the 2013 Act. The periods to be excluded are:

(1) the period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court; or

(2) the period specified in the Award of a Tribunal for taking possession; or

(3) such period where possession has been taken but the compensation is lying deposited in any designated account or in any account maintained for this purpose.

6. The learned counsel for the respondents are relying on the third alternative inasmuch as it has been contended that the amount for compensation has been deposited in court. According to the learned counsel for the respondents, this amounts to compensation lying deposited in a court. Consequently, it is urged that the entire period during which this amount was lying so deposited ought to be excluded. But one fact is lost sight of that even if this provision were to apply, the respondents would get benefit of only one day which would not be sufficient to disentitle the petitioner.

7. That being the position, the question of payment of compensation will have to be construed in the light of the various decisions rendered by the Supreme Court and this Court in:--

(i) Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, ;

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

(iv) Surender Singh v. Union of India and Ors.: W.P.(C) 2294/2014 decided 12.09.2014 by this Court.

In Pune Municipal Corporation (supra) it has been held that unless and until the compensation was tendered to the persons interested, mere deposit of the compensation amount in a court would not amount to payment of compensation. This aspect has also been considered in Gyanender Singh & Others v. Union of India & Others. W.P. (C) 1393/2014 decided by a Division Bench of this Court on 23.09.2014.

8. As such, in the present case, neither physical possession of the subject land has been taken nor has any compensation been paid to the petitioners. The Award was made more than five years prior to the coming into force of the 2013 Act. No period is liable to be excluded inasmuch as the second proviso, which has been newly inserted by virtue of the said Ordinance, is not applicable, as the said proviso is only prospective in operation and does not take away any rights which vested on the petitioner on 01.01.2014 when the 2013 Act came into force. In any event, in this case, even if the proviso were to apply the same would give a benefit to the respondents of one day which does not disentitle the petitioners.

9. 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 lands 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.