(2016) 02 DEL CK 0192

In the Delhi High Court

Case No : W.P. (C) 6339/2015, CM 11545/2015, W.P. (C) 6356/2015, CM 1156/2015, W.P. (C) 6357, 11565/2015, W.P. (C) 6363/2015, CM 11577/2015, W.P. (C) 6378/2015, CM 11606/2015, W.P. (C) 6490/2015 & CM 11809/2015

Usha Devi and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 11, Section 4
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, Section 24(1)(b), Section 24(2)

Citation : (2016) 02 DEL CK 0192

Hon'ble Judges : Badar Durrez Ahmed and R.K. Gauba, JJ.

Bench : Division Bench

Advocate : D.V. Khatri, for the Appellant; Jasmeet Singh, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—1. This batch of writ petitions has been filed invoking the proviso in section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as ''the 2013 Act''). The acquisition proceedings were initiated by a notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as ''the 1894 Act''). Those proceedings culminated in an award being Award No. 8/2008-09 dated 16.02.2009. The petitioners'' lands are comprised in khasra nos.:-

The total extent of the petitioners'' lands is 162 bighas 11 biswas in village Bakoli, Delhi. The total acquisition as reflected in the award was in respect of 304 bighas 17 biswas of land. It is, therefore, the case of the petitioners in this batch of writ petitions that they represent the majority of the land holdings being 162 bighas 11 biswas out of 304 bighas 17 biswas. It is also the case of the petitioners that compensation has not been paid to them. This is admitted by the

Land Acquisition Collector.

2. Section 24 of the 2013 Act reads as under:-

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and 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 said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

3. The issue with regard to the said proviso after section 24(2) came up for consideration before this court in Tarun Pal Singh & Anr. v. Lt. Governor, Govt. of NCT of Delhi & Ors.: WP(C) 8596/2014, and other connected matters, which was decided on 21.05.2015. In that case, this court 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.

8. Thus, while the said first proviso can harmoniously exist when read as a proviso to Section 24(1)(b), it cannot so exist when sought to be read as a proviso to Section 24(2) of the 2013 Act."

4. It is pertinent to point out that the reference to the ''first'' proviso is a reference to the proviso in question as the ''second'' proviso which had been introduced through an Ordinance is no longer in the statute book as the Ordinance itself lapsed. It is, therefore, clear from the said decision that the said proviso is actually a proviso to section 24(1)(b) of the 2013 Act and is not a proviso to section 24(2). Thus, for the purposes of this batch of petitions, it has to be seen as to whether the award under the 1894 Act was passed beyond five years prior to the commencement of the 2013 Act or was within the period of five years. In the present case the award was made on 16.02.2009 which is clearly within five years prior to the commencement of the 2013 Act (i.e.,01.01.2014) and, therefore, section 24(2) would have no application. On the other hand, Section 24(1)(b) would clearly apply. The proviso to section 24(1)(b), as already interpreted above, would apply in a case where the award having been made, compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries. In such eventuality all the beneficiaries of lands specified in the notification for acquisition under section 4 of the 1894 Act would be entitled to compensation in accordance with the provisions of the 2013 Act. In the present case, it is absolutely clear that the petitioners in this batch of petitions have not been paid compensation and they represent the majority of the land holdings. Therefore, the proviso gets triggered. As a result of which, the petitioners as also the other beneficiaries under the same acquisition, would be entitled to compensation in accordance with the 2013 Act.

5. Before parting with this batch of petitions, we would like to put on record the

stand of the DDA. The learned counsel for the DDA, referring to his affidavit on behalf of DDA, submitted that compensation on the part of the DDA had been handed over to the Land Acquisition Collector and it is the Land Acquisition Collector who ought to have paid the compensation to the petitioners. The fact that the Land Acquisition Collector did not pay the compensation to the petitioners should not result in any further burden on the DDA. We are not entering into this arena of dispute and it is for two the agencies to sort out the same. Insofar as the petitioners are concerned, they are entitled to compensation under the 2013 Act and we direct the respondents to pay the petitioners compensation in terms of the 2013 Act, as expeditiously as possible, irrespective of the inter se dispute between the Land Acquisition Collector and the DDA.

6. The writ petitions are allowed as above.

