

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10979/2006 & CM No.8443/2006**

Reserved on : 21st April, 2008

Date of Decision : July 10, 2008

DEEG RAM

..... Petitioner

Through: Mr.L.C.Chechi, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondent.

Through: Mr.Sanjay Poddar with

Ms.Monika Garg, Adv. for UOI.

Mr. Gaurav Sarin, Adv. for DDA.

CORAM :

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE V.K.SHALI, J

1. Whether reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

V.K.SHALI, J:

1. The petitioner in the present writ petition has challenged the Award No.1691, Village Madipur in respect of land in khasra No.643 (0-5) and khasra 644 (0-8).

2. Briefly stated the facts of the case are that the petitioner is claiming himself to be the Bhumidar of the aforesaid land situated in Village Madipur, NCT of Delhi having one half share in the aforesaid

land. It is alleged by the petitioner that he has a built up house on the said piece of land and the respondent/Land Acquisition Collector was trying to demolish the said house in the year 2006 on account of which he was constrained to file the present writ petition.

3. The petitioner has also stated that earlier also he had filed a suit for permanent injunction against the respondents on account of the fact that the respondents wanted to demolish his built up house. The said case also resulted in filing of a Regular First Appeal bearing No.296/1980 in the Hon'ble High Court wherein this Court vide order dated 31.7.2002 had restrained the respondents from dispossessing the petitioner without due process of law. It is stated by the learned counsel for the petitioner that in the award itself, it has been mentioned specifically that the possession of the land belonging to the petitioner has not been taken on account of the fact that it had a built up house. The petitioner now on the basis of a threatened action of dispossession and demolition by the respondents, has challenged the award No.1691 of Village Madipur in respect of the aforesaid two khasras in the present writ petition by seeking the following prayers:

“(a) Under the circumstances explained above it is humbly prayed that this Hon'ble Court may kindly be pleased to do issue a writ in favour of Petitioner and against Respondents, by way of issue of Writ of Certiorari or any other Writ to declare that the Award No.1691 of Village Madipur in respect of land bearing Khasra No.643(0-5) and 644 (0-8) situated in

Village Madipur is wrong, illegal, void and barred by time.

OR

(b) Declare that award made referred above stand waved having effect on the rights, title and interest of the Petitioner of the built up houses.

OR

(c) Issue a Writ or Other or Direction quashing all acquisition proceedings culminating is Award no.1691 of Village Maidpur in respect of land in Khasra No.643(0-5) and 644 (0-8) situated in Village Madipur, Delhi.

OR

(d) Issue a Writ or Order or Cancelling the Award no.1691 in respect of land in Khasra No.643(0-5) and 644 (0-8) situated in Village Madipur, Delhi of the Petitioner,

OR

(e) Restrain the Respondent from demolishing the built up house inland bearing Khasra No.643(0-5) and 644 (0-8) situated in Village Madipur, and taking the possession of land stated above,

OR

(f) Issue any Order or Direction or Writ which deemed fit in the matter. The costs of the proceeding may also be awarded.”

4. The respondent/UOI through Land & Building Department and the DDA have filed their counter affidavits.

5. We have heard the learned counsel for the parties. The issue which arises for consideration falls within very narrow compass. The petitioner in essence has challenged the award No.1691 of Village Madipur in respect of land bearing khasra No.643 measuring (0-5) and khasra no.644 measuring (0-8) on the ground that the award is illegal, void and barred by time or alternatively praying for quashing of the proceedings culminating into the award or restraining the respondents from demolishing his built up house on the land in question.

6. At the outset, it is to be noted that there is no dispute with regard to certain dates culminating into passing of the award. Section 4 notification in the instant case was issued on 13.11.1959. Section 6 declaration was issued on 10.6.1963 and thereafter award was passed on 31.3.1964. Notices under Sections 9 and 10 were also issued to the owners of the land including the petitioner who in response thereof filed their objections with regard to their claims. Therefore, it cannot be said that the petitioner was ignorant about the award having been passed by the respondent. No doubt an aggrieved party has a right to challenge the award but the same has to be done within the reasonable time. In the instant case, the petitioner has woken up from the deep slumber after 46 years and is challenging the award in the year 2006. The explanation which has been given by the petitioner for challenging the award in the year 2006 is that it was only in 2006 that the respondents threatened to take possession of the house of the petitioner in respect of the aforesaid two khasras which gave rise to the cause of action to the petitioner. In

our considered view this explanation, which is given by the petitioner that the cause of action accrued to the petitioner to challenge the award only in the year 2006 is totally devoid of any merit. The petitioner had admittedly responded to the notice under Sections 9 and 10 of the Land Acquisition Act, 1894 issued by the Land Acquisition Collector. The petitioner was aware of the factum of the award having been passed on 31.3.1964. Therefore, it was expected of the petitioner that he would challenge the said award within the reasonable time. There is not only inordinate delay and laches in challenging the award but in fact there is gross negligence on the part of the petitioner. By virtue of the present writ petition, the petitioner is trying to rake up a stale claim with regard to the validity of the award. This cannot be permitted to be done.

7. Assuming that the cause of action accrued to the petitioner much later in only 2006 when the alleged threatened action was being initiated by the respondent against the house of the petitioner even then it is not disputed by the petitioner that it was as early as on 31.7.2002 that the High Court had passed an order in RSA No.296/1980 restraining the respondents from dispossessing the petitioner from the land in question except in accordance with due process of law. At least at that point of time the petitioner could have challenged the aforesaid award. Even from the said date of 31.7.2002 also more than 3½ years have elapsed when the petitioner has come forward to challenge the award. Therefore, on this score also the challenge to the award in question must fail.

8. The second submission which has been made by the petitioner is that even though the challenge to the award is not sustained by the Court, the respondents cannot take the possession of the land in question, in pursuance to the award. If at all the possession is to be taken, it has to be done in conformity with Section 27 read with Article 112 of the Limitation Act, 1963.

Section 27 of the Limitation Act and the Article 112 framed thereunder reads as under :-

“Section **27. Extinguishment of right to property.**
-- At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

112.	Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.
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9. A perusal of the aforesaid two provisions would show that there is a time limit specified within which an action for taking the possession has to be initiated, otherwise, the right of the parties by prescription is

acquired. However, the aforesaid two provisions would not be applicable to the facts of the present case for the simple reason that in the instant case land having been validly acquired and awarded as early as 31.3.1964, there is no question of extinguishment of the right to the property. Therefore, the only question which remained was as to when the physical possession of the awarded land is taken. With regard to the possession of the land in question, the respondents are only expected to comply with the provisions specified under the Land Acquisition Act as envisaged under Section 17, which lays down that an amount of 80% of compensation has to be deposited before the possession is taken. Further Section 47 also prescribed the modality in which the possession is to be taken. The aforesaid two provisions read as under:-

“Section 17(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3), --

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

“Section 47. Magistrate to enforce surrender – If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police and such Magistrate or the Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.”

10. It is not the case where the respondents are filing a suit for possession against the petitioner that they are expected to comply with the provisions of Section 27 read with Article 112 of the Limitation Act, 1963. Therefore, so far as the provisions of the Limitation Act, 1963 are concerned, which have been relied upon by the petitioner, they are not applicable to the facts of the present case.

11. Looking at the aforesaid proposition from a different perspective, there are a catena of authorities both by the High Court as well as that of the Hon'ble Supreme Court wherein the delayed acquisition of land has been upheld. In N.K.Ahuja Vs. Union of India and Ors. 107 (2003) DLT 295 (DB), it has been held by the Division Bench of our own High Court that on account of delay in taking the possession proceedings under the Land Acquisition Act cannot be deemed to have been withdrawn. In The State of Madhya Pradesh & Ors. Vs. Vishnu Prasad Sharma & Ors. AIR 1966 SC 1593, the Hon'ble Supreme Court in the larger public interest refused to quash the Land Acquisition proceedings on the ground of delay but chose only to give additional amount of compensation to the land owners. Similar is the view expressed by the Hon'ble Supreme Court in Murari and Ors. Vs. Union of India and Ors. (1997) 1 SCC 15. Without going into the question of reasons for the delay in taking the possession or the apportionment of the same between the authorities and the petitioner, we are of the considered opinion that delay in taking the possession from the petitioners of the land in question in pursuance to

the award which has not been assailed cannot be faulted with. The only question which arises for consideration is whether delay in taking the possession of the land for the planned development of the city of Delhi, as and when the requirement arises can be found fault with.

12. Learned counsel for the petitioner while urging the point that the possession of the land could not be taken after a considerable delay relied upon a Division Bench judgment in case of Sita Ram Vs. Secretary of State AIR 1937 Patna 56. At the outset, it is stated that the said judgment only has a persuasive value so far as this Court is concerned. Apart from this the said authority was considering the question of applicability of Article 149 of the Limitation Act, 1908. In the case which has been relied upon by the learned counsel for the petitioner, the land was acquired in the year 1900 by the Railway company. However, the possession of the portion of the land was not taken. Rather the Government had neglected to take the possession for a long time. In 1929, a suit was filed for ejectment of one person in possession. It was in such a factual matrix that the Division Bench of the Patna High Court held that the said suit was governed by Article 149 of the Limitation Act, 1908. In our case, the award has become final and only the possession was to be taken. No suit for possession was filed by the respondents. Therefore, the applicability of Article 149 of the Limitation Act, 1908 or corresponding Article under the new Act would not be applicable. Moreover, the Hon'ble Supreme Court as in case titled Haryana Financial Corporation vs. Jagdamba Oil Mills 2002(3) SCC

496 specifically laid down that law laid down in a particular case should not be applied like theorems. The facts of the case which has been relied upon by a party must be analysed in the light of the facts of the case in hand and then the law ought to be applied. Therefore, the factual matrix of the cases being different, the judgment which has been relied upon by the learned counsel for the petitioner is not applicable. On the contrary, there are judgments of our own High Court as well as of the Hon'ble Supreme Court, the details of which have been given hereinbefore that an acquisition is not deemed to have been withdrawn merely on account of delay in taking the possession. Thus, this argument of the learned counsel for the petitioner must necessarily fail.

13. The learned counsel for the petitioner has placed reliance on order dated 12th December, 2007 purported to have been passed by Govt. of NCT of Delhi, Urban Development Department regarding Regularization of unauthorized colonies wherein it has been observed that land acquisition proceedings in respect of private lands where possession has not been taken and compensation has not been given, the Government should refrain from taking the possession. A perusal of the said circular would clearly show that the circular is applicable to the unauthorised colonies which have sprung up on Government land or private land. In the instant case, we are not dealing with the regularization of unauthorized colonies on the private land belonging to the petitioner. On the contrary, the petitioner is trying to challenge the acquisition proceedings and factum of taking possession taken on the

grounds of delay. Therefore, we are of the opinion that the said order is not applicable to the facts of the present case.

14. In the light of the discussion herein above, we are of the view that the petition of the petitioner challenging the acquisition proceedings or taking of the possession by the respondents pursuant to the award No. 1691 dated 31.3.1964 in respect of Khasra No. 643(0-5) and 644(0-8) of village Madipur, must fail. Accordingly, the writ petition is dismissed. No order as to costs.

V.K.SHALI, J

MUKUL MUDGAL,J

July, 10 2008
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