

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

% Date of decision: 12.11.2010

+ WP (C) No.266/2010

FOUNTAINHEAD MOTELS PVT.LTD ...PETITIONER

Through: Mr.Gautam Awasthi, Advocate

Versus

UNION OF INDIA & ORS. ...RESPONDENTS

Through: Mr.Sanjay Poddar, Advocate for
R-2 and R-3.

Mr.A.S.Rao, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

SANJAY KISHAN KAUL, J. (Oral)

1. The petitioner-Company owned land measuring 12 bighas and 9 biswas situated in the Village Aya Nagar, Tehsil Mehrauli, New Delhi.
2. It is the case of the petitioner that building plans for the construction of a motel building were sanctioned by the MCD on 25.04.2003 and the Ministry of Tourism, Govt. of India granted approval to the petitioner for setting up of a 4

star category hotel on 15.02.2006. NOC by the Delhi Fire Service was also granted on 22.05.2006.

3. The land in question however was notified under Section 4 of the Land Acquisition Act, 1894 ('the said Act' for short) vide notification dated 25.07.2007 for the public purpose of construction of Arjangarh Metro Station on the Qutub Minar-Gurgaon Corridor of Delhi MRTS Project, Phase-II. The petitioner challenged these acquisition proceedings and filed WP(C) No.6275/2007 before this Court. During the pendency of the petition a declaration was issued under Section 6 of the said Act on 08.10.2007 and simultaneously a notification of even date under Section 17(1) of the said Act was also issued. The writ petition was dismissed as withdrawn on 10.10.2007 as the DMRC agreed to make some changes in the modified lay out plan for the station. The possession of the land was taken over on 19.01.2008 and notices were issued under Section 9 and 10 of the said Act.
4. The petitioner filed a claim petition for compensation and the petitioner states that an award was made by the LAC (South) fixing the value of the land of the petitioner at Rs.41,000/- per square metre treating the same as a commercial land by relying upon a notification of Govt. of NCT of Delhi dated 18.07.2007 in respect of valuation of land and properties. The statement of compensation was prepared by the office of the LAC under the signatures of

the Tehsildar along with Naksh Mutziman. Despite this fact, it is pleaded that the LAC made a second award which was published on 06.10.2009 fixing the compensation of the entire acquired land at Rs.17,59,824.38/- treating the land of the petitioner as agricultural. The petitioner states that he received a certified copy of both the awards on 30.11.2009.

5. The petitioner has filed the present writ petition under Articles 226 and 227 of the Constitution of India seeking quashing of what is claimed to be the second award being 04/2009-2010 dated 06.10.2009 passed by the LAC in respect of the land of the petitioner being khasra no.558/1 measuring 830 square metres and khasra no.576 measuring 1105 square metres situated in village Aya Nagar, Tehsil Mehrauli, New Delhi with a direction that the compensation be awarded to the petitioner in terms of the earlier award.
6. Notice was issued on the writ petition on 18.01.2010 on the submission of the learned counsel for the petitioner that though the LAC had signed the award and sent to the Secretary (Revenue), who being a superior officer proceeded to issue certain direction to treat the nature of the land in a different manner. This was stated to be not permissible in view of the judgment of the Supreme Court in Vijayadevi Navalkishore Bhartia and Anr. V. Land Acquisition Collector and Anr.; 2003 (5) SCC 83. Learned counsel for the petitioner submitted that the petitioner was satisfied

with the compensation as originally determined by the LAC and had not filed any reference and the challenge was only to the subsequent award being in respect of the same land as per directions of the Secretary (Revenue).

7. Another aspect recorded in the order dated 18.01.2010 while issuing notice was that in para 11 of the judgment in Vijayadevi Navalkishore Bhartia and Anr. V. Land Acquisition Collector and Anr.'s case (supra) a reference had been made to other judgments of the Supreme Court which had taken a slightly different view and the matter was directed to be placed before the Hon'ble Chief Justice of India for necessary orders. We were thus of the view that once the matter had been placed before the larger Bench of the Supreme Court, despite earlier pronouncements, it would be appropriate to examine the matter and consider the opinion of the Supreme Court to be rendered on such a reference.
8. The counter affidavit has been filed only by LAC(South). It is stated in the affidavit that as per the Master Plan of Delhi, the approved use of the land in question is rural and not meant for commercial purpose. The Zonal Plan of Zone 'J' was not approved by the Government of India at the time of initiation of the acquisition proceedings till the drawing of the award and thus the land in question was required to be valued as per the agricultural use since commercial use of the land was prohibited under Section 24 of the Delhi Land Reforms Act, 1954 ('DLR Act' for short).

9. The aforesaid fact was not taken note of while drawing up the draft award which was submitted to the competent authority for approval. The competent authority while examining the award and giving approval for the same, considered this fact and thus called upon the LAC to correct the mistake in the award. The LAC is stated to have no jurisdiction to make an award while considering the user which was prohibited under a particular law in view of Section 24 of the DLR Act. Motels are stated to be permitted in rural area and by construction of motel the user of the land does not change in any manner. It is in view thereof, the award was properly drawn by the LAC which was pronounced on 06.10.2009. Prior to that, no award had been made or published and thus it was not a second award being drawn. It is stated that since an award is binding on the Government while not on the private party, the competent authority is well within its right to make all necessary corrections of mistakes prior to the publication.
10. It has been specifically averred that the matter in issue is covered against the petitioner in view of the earlier pronouncements in State of Bihar v. Prem Kumar Singh; 1998(2) SCC 573 and State of Bihar v. D.N.Singh; 1998 (2) SCC 572. It is submitted that this fact is even noticed in the Vijayadevi Navalkishore Bhartia and Anr. V. Land Acquisition Collector and Anr.'s case (supra) and in view thereof matter was directed to be placed before a larger Bench, the

existing law continued to be as enunciated in State of Bihar v. Prem Kumar Singh's case (supra) and State of Bihar v. D.N.Singh's case (supra).

11. Another important aspect which has been brought to our notice by learned counsel for R-3 is the fact that in pursuance to the directions passed by the two Hon'ble Judges of the Supreme Court in Vijayadevi Navalkishore Bhartia and Anr. V. Land Acquisition Collector and Anr.'s case (supra), a larger Bench of three judges was constituted and an order was passed on 12.2.2004 in the following terms:

"A large tract of land situate in Akola city was sought to be acquired and for that purpose a Notification was issued on 3rd June, 1999, under Section 4 of the Land Acquisition Act, 1984 (hereinafter referred to as 'the Act') which was followed by another Notification under Section 6 of the Act on 25th November, 1999. Subsequently, a notice was sent to the appellants herein by the Land Acquisition Officer for filing their claim for determining the compensation. The Land Acquisition Officer prepared a draft Award and sent it to the Commissioner of the Division for his prior approval. The Commissioner did not agree with the proposed compensation awarded to the appellants by the Land Acquisition Officer as he was of the view that the land has not got the potentiality of non-agricultural land and remitted the said Award to the Land Acquisition Officer for being delivered. Subsequently, the Land Acquisition Officer delivered the Award. The appellants herein challenged the order of the Commissioner, remitting the Award to the Land Acquisition Officer before the Bombay High Court. The High Court dismissed the writ petition. It is

against the said order and judgment, the appellants are in appeal before us.

When the matter was taken up for hearing, it was brought to our notice that the appellants have already challenged the Award by seeking reference to the Civil Court and the matter was pending adjudication. Since all the questions which are raised in this appeal are available to the appellants to be raised before the Reference Court, we, therefore, are not inclined to interfere in the matter.

The appeal is, accordingly, dismissed without going into its merits. There shall be no order as to costs."

12. It is submitted that thus the petitioner had misrepresented before this Court that the issue was pending before a larger Bench of the Supreme Court while in fact that issue stood decided six years ago.

13. We may note that insofar as the order dated 12.02.2004 by the larger Bench of the Supreme Court is concerned, all that is noticed is that the award was challenged by seeking reference to the Civil Court and since all questions which were raised in the appeal were available to the appellants to be raised before the Reference Court, the Court was not inclined to interfere in the matter. Thus, there is no contrary pronouncement of the Supreme Court to the views expressed by the earlier Benches of the Supreme Court of two Hon'ble Judges.

14. It is thus submitted that the petitioner not having availed of the option of seeking a reference for a larger

compensation under Section 18 of the said Act within time stipulated, cannot now through the process of filing of present writ petition evade the rigours of limitation which would arise on account of the petitioner not availing of his remedy under the said Act.

15. We have examined the aforesaid submissions of learned counsel for the parties.

16. We find substance in the plea of learned counsel for R-3 that the petitioner was duty-bound to bring to our notice the order passed by the larger Bench of the Supreme Court on 12.02.2004 in pursuance to the judgment in Vijayadevi Navalkishore Bhartia and Anr. V. Land Acquisition Collector and Anr.'s case (supra).

17. The issue was crystallized in para 8 of the judgment as under:

“8. The issue in this appeal centres around the question of the authority of the Commissioner exercising a power under the proviso to Section 11(1) of the Act to reconsider the material on record and to disagree with the finding of the Collector and further, to issue directions to the Collector to fix the market value/compensation in a manner he thinks appropriate. While the appellants contend that no such power vests with the Commissioner, the respondents contend that the Commissioner is vested with such power.”

18. The court thereafter proceeded in para 9 to discuss the said issue to come to the conclusion that the power of enquiry under Section 11 of the said Act vested with the

Collector and did not find that the Commissioner while considering the grant of approval would exercise the power under the said provision. The Bench of two Hon'ble Judges was, however, conscious of the somewhat different view propounded earlier and noticed the same in para 11 which reads as under:

“11. However, we notice that a somewhat different view has been taken by this Court in the case of *State of Bihar v. Prem Kumar Singh*, a judgment rendered in the civil appeal arising out of SLP (C) No. 7837 of 1993, decided on 30-11-1993 [reported only in (1998) 2 SCC 573]. In that case, this Court held that the officers authorised by the State Government by notification under proviso to sub-section (1) of Section 11 for approval of the award could reduce the compensation fixed by the Collector. This Court followed the judgment in the case of *Prem Kumar Singh* (supra) in a later case in the case of *State of Bihar v. D.N. Singh (Dead) by LRs.* [(1998) 2 SCC 572] in Civil Appeal No. 7695 of 1997 decided on 13-11-1997. In both the abovesaid judgments of this Court, we find the Court has not considered the nature of power exercised by the Commissioner under proviso to Section 11(1) of the Act nor has the Court considered the effect of introducing Section 15-A of the Act. However, since the view taken by this Court in those two judgments is somewhat in conflict with the view we have expressed in this case, to settle the law in question, we think it appropriate that this matter should be referred to a larger Bench. Therefore, the papers in this appeal shall be placed before the Hon'ble the Chief Justice of India for necessary orders.”

19. As noticed in the aforesaid paragraph, in order to avoid conflict with the earlier views of two Hon'ble Judges in

two different judgments, it was deemed proper to refer the matter to a larger Bench.

20. The larger Bench in its wisdom chose to dispose of the appeal in terms of the order dated 12.02.2004. In that order, the views expressed earlier by the two Benches of two Hon'ble Judges each in State of Bihar v. Prem Kumar Singh's case (supra) and State of Bihar v. D.N.Singh's case (supra) were not over-ruled and the appeals were dismissed without going into merits.

21. The result of this is that the views expounded in State of Bihar v. Prem Kumar Singh's case (supra) and State of Bihar v. D.N.Singh's case (supra) hold the field where it has been held that officers authorized by the State Government by a notification under Section 11(1) of the said Act for approval of the award could reduce the compensation fixed by the Collector. This is exactly what has happened in the present case where the competent authority called upon the LAC to reduce the compensation as the prescribed user of the land was agricultural and the LAC followed suit.

22. The result of the aforesaid is that the very substratum of the case of the petitioner of there being two awards is without any basis as there is only one award dated 06.10.2009 and prior to that all that had happened was that the award which was to be published had been drawn and sent for approval by the competent authority. In case the petitioner was aggrieved with the determination of the

compensation, it was open to the petitioner to seek a reference under the provisions of the said Act for enhancement of compensation.

23. We are also constrained to note the conduct of the petitioner in not pointing out to us that after the judgment in Vijayadevi Navalkishore Bhartia and Anr. Vs. Land Acquisition Collector and Anr.'s case (supra) by two Hon'ble Judges on 05.03.2003 whereby the papers were directed to be placed before the Hon'ble Chief Justice of India to constitute a larger Bench, such a Bench was constituted and the appeal had been dismissed without going into the merits in terms of the order dated 12.02.2004. Thus, a completely erroneous submission was made on 18.01.2010 as if this issue was still pending consideration before the Hon'ble Supreme Court. In our considered view, it is not open to the petitioner to claim lack of knowledge in this day and age of technology and availability of all the orders on the internet. It was the bounden duty on the part of the counsel for the petitioner to have verified the fate of the reference made to the larger Bench as far back as on 05.03.2003. The order of the larger Bench dated 12.02.2004 was kept away from us and we were persuaded to issue notice even though there were authoritative pronouncements of the Supreme Court in State of Bihar v. Prem Kumar Singh's case (supra) and State of Bihar v.

D.N.Singh's case (supra) contrary to the plea advanced by the petitioner.

24. We may note that even after this order of the larger Bench of the Supreme Court dated 12.02.2004 was pointed out, learned counsel for the petitioner persisted in his submissions by seeking to rely upon the order of reference dated 05.03.2003. Such a plea is completely misplaced.

25. We find substance in the plea of R-3 that the petitioner has misled this Hon'ble Court to issue notice while not pointing out the order post reference of the larger Bench in the same appeal dated 12.02.2004.

26. We are also of the view that the present writ petition deserves to be dismissed with exemplary costs. It has been observed in Sita Ram Bhandar Society v. Govt. (NCT of Delhi); (2009) 10 SCC 501, in para 41, that every citizen has a right to utilize all legal means open to him to vindicate and protect his rights, but if the court comes to the conclusion that the pleas raised are frivolous and meant to frustrate and delay proceedings, deterrent action can be taken by imposition of exemplary costs.

27. The writ petition is accordingly dismissed with exemplary costs of Rs.1 lakh.

SANJAY KISHAN KAUL, J.

NOVEMBER 12, 2010
dm

VALMIKI J. MEHTA, J.