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

Date of decision: 05.02.2010

+ CS(OS) 349/2004

TEJ PAL SINGH BHATIA & ORS. Plaintiffs
Through : Mr. Rakesh Mukhija and Mr. Dhruv Kapur, Advocates.
versus

UNION OF INDIA & ORS. C+ Defendants
Through : Ms. Sangeeta Chandra, Advocate, for DDA.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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.

S.RAVINDRA BHAT, J. (OPEN COURT)

I.A. No. 12471/2007 (Under Order 7 Rule 11)

1. The present order will dispose of an application filed by the defendant (hereafter referred to as “DDA”); challenging the maintainability of the suit and requesting for its rejection.
2. A permanent injunction against the DDA and other defendants from interfering with what is termed as peaceful possession of land, being Khasra Nos. 74/23/2 (Bigha-Biswas), 77/2/2 (Bigha-Biswas), 77/3/1 (Bigha-Biswas), 77/8/2, 77/9/1, 77/12/2, 77/13/1, 77/19/1, 77/22/2, 77/18, 724/23/3, situated in the revenue estate of Mehrauli, New Delhi is also sought.
3. Briefly, the undisputed facts are that on 24.10.1961, a notification was issued under Section 4 of the Land Acquisition Act, 1894 (hereafter referred to as the “Act”). This was followed by a declaration of 04.01.1969. It is a common ground that the plaintiffs’ predecessor-

in-interest, M/s. Bhair Traders and Financial Private Limited, claiming to be owners of the land, challenged the acquisition proceedings and more particularly, the declaration under Section 6. It is not disputed that the Writ Petition was withdrawn on 14.08.1969, a copy of that order is part of the record. The authorities proceeded with the acquisition proceedings and drew up the award on 09.12.1983. Sometime in 1985, the complainant DDA contended that physical possession was taken on 21.12.1983 – a fact disputed by the plaintiffs.

4. M/s. Montari Enterprises Private Ltd. complains that the DDA was interfering with its possession and unlawfully seeking to take-over the suit lands; it questions the authority of the DDA to do so, in W.P. 1805/1985. The writ petitioner in those proceedings claims to be the successor-in-interest of the original petitioner, M/s. Bhair Traders and Financial Private Limited. The Court granted an interim order which subsisted right till disposal of the writ proceeding by the Division Bench of this Court on 30.10.2003. The Division Bench made an elaborate and reasoned judgment running into 15 pages. It undoubtedly held that the subsequent writ petition is not maintainable principally on the following grounds – (1) that the predecessor owner of the suit land had unconditionally withdrawn the earlier Writ Petition in 1969, which consequently barred maintainability of 1985 proceedings; (2) The respondent, DDA had completed acquisition proceedings consequent upon such withdrawal, which estopped the writ petitioner from questioning it and that the earlier order constituted *res judicata*, barring the subsequent writ petition.

5. Reasoning of the Division Bench does not rest merely on the fact that a subsequent writ petition was not maintainable; in the course of the judgment, it was expressly recorded as follows:

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3. *Learned counsel appearing for the petitioner submitted that this decision has been affirmed by the Apex Court and, therefore, there is no reason as to why this decision should not be followed and notifications under Section 4 and 6 of the Act should not be quashed.*

4. *It may be noted that the petitioner at the time of argument of the matter drew out attention to the notification issued under Section 6 of the Act wherein some part of the lands belonging to him is referred to by khasra numbers and not by other parcels of land. It may be noted that Section 6 notifications might have been published in various parts. In the XXX (not legible)XXXX the petitioner challenged the issuance of Section 6 notification as his lands were covered by notification issued under Section 6 in the year 1969. Thus, before the filing of the petition the petitioner was aware that his lands are covered vide notification issued under Section 6 of the Act. If his lands were not covered by the said notification, there was no reason for him to challenge the said notification. After withdrawal of the petition in the year 1969 the petitioner kept quiet. After the possession was taken, according to the respondent, notification was issued under Section 22(1) of the Delhi Development Act. The said notification is dated 6.1.1984 and is on the file. Reading the said notification, it is very clear that it is issued under Section 22(1) of the Delhi Development Act and the land referred therein are placed at the disposal of the DDA by the Competent Authority.*

5. *Learned counsel for the petitioner submitted that Block No.13 which was sought to be acquired vide the notification issued under Section 4 reads as under:-*

“Block No.13.

Area bounded on the –

North:- by the Mehpalpur Road.

East:- by Gurgaon Road.

West:- by an imaginary line parallel to the Gurgaon Road at a distance of ½ mile.

South:- by an imaginary line parallel to Mehpalpur Road at a distance of ½ mile.

6. *On the north side of the area acquired there is Mahipalpur Road. The area acquired is covered on the east side by Gurgaon Road. So far as west is concerned, there is a road known as Gurgaon road. But as per the notification, for the demarcation ½ mile parallel to that road was required to be drawn for the purpose of covering the entire land under acquisition. That line is known as ‘imaginary line’. So far as sought is concerned, there is Mahipalpur Road and similarly line was required to be drawn as in case of western side. Thus, land in Block No.13 is covered by these four boundaries. Whatever the khasra numbers are situated in these blocks were sought to be acquired vide notification under Section 4 issued by the Competent Authority. As per the demarcation, whatever the lands were included in Block No.13 were acquired for which notification*

under Section 6 was issued and which was challenged by the petitioner much earlier.

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One of the Judges, *A.K. Sikri, J* wrote a concurring but additional opinion, which agreed with the findings of learned Chief Justice but added a few other reasons. In para 21 of that judgment, the learned Judge concurred with the view of the Chief Justice that the suit lands were in fact covered by the notification which was the cause for the writ petitioners to challenge it in 1969.

6. The DDA contends that having participated in two proceedings – in the first, the plaintiff challenged the very same notification in respect of the suit land and withdrew it unconditionally, and having taken no steps to agitate the aspects which are said to be contended in the present suit, the plaintiff here cannot maintain the suit. Ms. Sangeeta Chandra, learned counsel on behalf of the DDA contended that principles of *res judicata* and *constructive res judicata* embodied in Section 11 of CPC effectively bar a further enquiry into the entire issue and further that the observations of the Division Bench being categorical, are binding upon this Court, which should not entertain the suit further and ought to reject it. It is also submitted in addition that the plaintiff's *locus standi* is questionable since it claims to be successor on the basis of a Power of Attorney and an Agreement to Sell, executed on 26.10.1985, at a time when the acquisition proceedings had concluded and the award made.

7. The plaintiffs resist the application and submits that neither the order of the policy order of 1969 permitting the first two petitions to be withdrawn nor the subsequent judgment of the Division Bench investigate or examine the basic grievance which impelled him to approach the Court, i.e. suit lands were indeed never covered by Section 4 notification and the declaration

under Section 6. Considerable reliance was placed on the decision reported as *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and Ors.*, AIR 1987 SC 88. In the said judgment, the Supreme Court had observed as follows:

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9. *The point for consideration is whether a petitioner after with-drawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.*

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8. It is contended that the circumstance that the earlier writ petition did not decide anything but merely recorded a withdrawal of the writ petition coupled with the *status quo* judgment of 30.10.2003 by the Division Bench, which reiterated that the writ petition was not maintainable did not question the plaintiffs’ right to contend that the notification in fact did not include the suit lands, which is a factual aspect that can be included newly by the Court after taking such

evidence as is necessary.

9. It is submitted that the Courts should not reject the suit on the ground that it is barred by the principles of *res judicata* or in terms of Order 23 Rule 1, since there has been no determination on grounds of the basic grievance of the plaintiffs.

10. It is evident from the above discussion that the following facts are not in dispute:

(a) The notifications were issued in 1961 (under Section 4) and in 1969 (under Section 6 of the Act.

(b) The predecessor of the present plaintiff filed a writ petition in 1969, feeling aggrieved by the notification.

(c) The plaintiff does not say that the writ petition pertained to lands other than those that are the subject matter of the present suit.

(d) The said writ petition (hereafter “the first writ petition”) was withdrawn on 14.08.1969.

(e) No leave to file a fresh proceeding or writ petition was sought or obtained from this Court.

(f) The acquisition proceedings were completed in which award was made in 1983.

11. The plaintiffs contend that since the earlier writ petition was not decided on merits, it is open for them to challenge the factual basis of the declaration to the effect that it does not cover the suit lands. The plaintiffs had occasion to approach the Division Bench on a second occasion in 1985. That writ petition was dismissed in 2003. The judgment is not a mere order of dismissal in *liminie*. The Division Bench gave detailed reasons why the writ petition was not maintainable. In the course of the judgment, it observed or rather found (in paras 4 and 6) that the suit lands were covered by Section 6 Notification which was precisely the reason for the plaintiffs’

predecessors to approach the Court challenging it. On the strength of that reason, the Division Bench proceeded to hold that having challenged the inclusion of the suit land earlier and abandoning the claim, the subsequent writ petition was not maintainable on an application of the principles of *res judicata*. The separate and concurring opinion of *A.K. Sikri, J* also endorses the view of the learned Chief Justice that the suit lands were indeed covered by the notification. The Court cannot also be unmindful of the decision reported as *State of Punjab v. Bua Das Kaushal* 1970 (3) SCC 656, which endorsed the view in *Union of India v. Nanak Singh* AIR 1968 SC 1370. The Court held, in *Bua Das Kaushal*, that:

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.....It has been observed that there is no good reason to preclude decisions on matters in controversy in writ proceedings under Article 226 or Article 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties.....

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These factors are, in the opinion of the Court, sufficient for a finding that the present suit is not maintainable.

12. The plaintiff claims to be owner on the basis of an Agreement to Sell (executed by M/s. Montari Enterprises Private Ltd.) as well as a Power of Attorney dated 26.10.1995. Concededly, the plaintiff is not the recorded owner which would possibly have entitled him to challenge the acquisition proceedings or claim compensation. Reliance on the said two documents, in the opinion of the Court, is insufficient to clothe the plaintiff with the right to seek declaration as is sought in the present case since they are not documents of title. In any event, the orders in the earlier two writ petitions – of 1969 and 2003 are in respect of the suit lands and would bind the plaintiff as well as this Court.

13. For the above reasons, the Court is satisfied that the objection to the maintainability of the suit raised by the DDA is substantial. I.A. No. 12471/2007 has to succeed and is accordingly allowed.

CS(OS) 349/2004

In view of the orders made today in I.A. No. 12471/2007, CS (OS) 394/2004 is rejected.

**S. RAVINDRA BHAT
(JUDGE)**

**FEBRUARY 05, 2010
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