

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

% Judgment reserved on : 29.01.2010
Judgment delivered on: 04.03.2010

+ 1. W.P.(C) 2185/2008

NARESH KUMAR & ORS. Petitioners
Through: Mr. Sumit Bansal, Advocate

-versus-

GOVT. OF NCT OF DELHI Respondent
Through: Mr. Sanjay Poddar, Advocate

+ 2. W.P.(C) 381/2009

NARESH KUMAR & ORS. Petitioners
Through: Mr. Sumit Bansal, Advocate

-versus-

GOVT. OF NCT OF DELHI Respondent
Through: Mr. Sanjay Poddar, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE VEENA BIRBAL

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

VEENA BIRBAL, J.

1. The present two petitions are filed by the petitioners seeking directions for quashing of review award no. 16/03-04 dated 14.07.2004 and for release of balance payment to the petitioners in respect of award no. 16/03-04 dated 01.10.2003

and supplementary award 16-A/04-05 dated 27.10.2004 along with interest and other consequential benefits and to forthwith make the reference filed by the petitioners to the civil court.

The case of the petitioners is that petitioner no. 1 and Sh. Manoj Kumar were the owners of land forming part of khasra no. 17 min., 18/1 min., 18/2 min., 19 min. and 20/1 min., in all measuring 12 bighas and 5 biswas. A notification under Section 4 in respect of said land under Land Acquisition Act (hereinafter referred to as 'the said Act') was issued on 23.05.2002. The said notification was followed by a declaration under Section 6 along with Section 17(1) of the said Act on 17.12.2002. On 01.10.2003, respondent made an award bearing no. 16/03-04 in favour of petitioners. In October, 2003, 80% of the compensation as ascertained by the respondent i.e. Rs. 1,87,10,194/- was released to the petitioner no. 1 and Sh. Manoj Kumar out of total amount of Rs. 1,97,08,397/-. Balance amount of compensation of Rs. 9,98,203/- along with interest was not paid. Sh. Manoj Kumar expired on 06.09.2005. Petitioners no. 2 and 3 are the legal heirs of Sh. Manoj Kumar. Petitioners made various efforts to get the balance compensation released in their favour but the same was not released.

On 11.10.2007, petitioners filed an application under Right to Information Act to know about supplementary award, if any, passed in the matter. No information was provided to petitioners. Ultimately, petitioner had to file an appeal before the appellate authority under Right to Information Act. Despite

that, same was not provided. Petitioners filed Second Appeal before Central Information Commission under the aforesaid Act. On receipt of the said application, respondent furnished information vide letter dated 18.12.2007 that a supplementary award was passed in the matter on 27.10.2004 wherein compensation of trees was assessed in their favour. Thereafter, petitioner made representation for release of said compensation but the same was not released.

On 18.03.2008, petitioner filed the present petition i.e. W.P.(C) No. 2185/2008 for the release of compensation in respect of supplementary award in their favour. Notice of the said petition was issued to respondents vide order dated 18.03.2008. In response to same, respondent filed counter affidavit stating that at the time of making award dated 01.08.2003, certain compensation was awarded in contravention of Section 24 of the Act as compensation for illegal super structure on the land of the petitioners was awarded whereas no compensation ought to have been awarded to them in respect of said structures. Accordingly, the review of earlier award dated 01.08.2003 was done and fresh Review award on 14.07.2004 was passed. On coming to know of the said stand of the respondent, petitioner filed the second writ petition i.e. W.P.(C) no. 381/2009 challenging the said Review Award.

2. Learned counsel for petitioner has contended that action of the respondent in making review award dated 01.10.2003 is illegal and in contravention of provisions of Section 12 of the

said Act. It is contended that as soon as the award is pronounced and filed in the Collector's Office, the award becomes final and conclusive between the Collector and person interested. It is further contended that under the said Act, the power of review of the award has not been conferred upon any authority as such review award is illegal being contrary to statute. It is contended that review of the award can be done only under Section 13 A of the Act which permits removal of arithmetical and clerical errors within a period of six months. It is contended that beyond that, nothing can be done by the Collector. It is further contended that what has been done in the present case is not permissible under the law as change has been made on merits and the same are not arithmetical or clerical errors in any manner.

3. The stand of respondent is that in the earlier award no. 16/03-04 dated 01.10.2003, compensation was assessed in respect of land and super structure of petitioners at Rs. 1,97,08,397/- out of which petitioners have already received Rs. 1,87,13,782/-. The said award included compensation for illegal structure which was in contravention of Section 24 Clause 8 of the Act as such on the directions of appropriate authority, compensation of Rs. 45,67,005/- was reduced in respect of illegal structures vide Review Award dated 14.07.2004. The further case of the respondent is that supplementary award no. 16-A/04-05 of 16/03-04 was made on 27.10.2004 in respect of trees on the land acquired and the compensation of which was assessed at Rs. 45,36,781.64 p. It is contended that as the

W.P.(C) 2185/2008 & 381/2009 Page 4 of 9

petitioners have already received payment in excess as per award dated 01.10.2003, they are not entitled for any further payment in the supplementary award.

4. We have considered the submissions made and perused the record.

5. It is admitted position that initially award was made/announced on 01.10.2003 by the respondent in respect of land and super structure existing on it. Proceedings for determination of compensation was done under Section 11 of the Act by respondent. Before proceeding to determine the compensation, notices under Section 9 and 10 of the Act were issued to interested parties. Notice under Section 50 of the Act has also been issued to Requisitioning Department to appear and to adduce the evidence for determining the compensation but none appeared before LAC on behalf of Requisitioning Department nor adduced any evidence. The interested parties filed their claims including the present petitioners. The land is an agricultural land on which there exist farm houses. The dispute is about the compensation awarded for the structures on the land.

The case of the respondent is that review of the award was done as certain compensation in respect of illegal structure on the land was awarded in contravention of Section 24 Clause 8 of the Act and the Secretary, Land and Building had requested the Office of the respondent to re-examine the evaluation of super structure of the farm house keeping in view

acquisition were in accordance with Sanction Plan of MCD or that construction was done as per Building Bye Laws. Petitioners cannot be allowed to take advantage of their own illegal acts. Technicalities cannot be allowed to defeat the express provisions of a Statute. Provisions of Section 24 Clause 8 are very clear. Huge public money is involved. It will not be in the public interest also to accept the contention of petitioner.

In State of Orissa Vs Rajakishore Das (1996) 4 SCC 221, it has been held that :-

“.....The construction was unauthorized. Nonetheless, the High Court directed the payment of compensation. We find that the approach of the High Court is clearly illegal. Having recorded the finding that the respondent had constructed the building without permission of any authority and since the Government is entitled to have the unauthorized construction demolished, unless the owner himself voluntarily demolishes and takes the value of the building structure is salvage material, the High Court ought to have held that the respondent had proceeded unauthorisedly in constructing the building having had the knowledge of the acquisition. Therefore, the authorities are not bound by such construction. Consequently, the State is not bound to pay compensation of the value of such a building constructed unauthorisedly. The judgment and order passed by the High Court directing payment of compensation of Rs.90,000 is clearly illegal.”

It may also be mentioned that initial award was made on 01.10.2003 and Review Award was made on 14.07.2004 whereas present petition is filed in January, 2009 i.e. after a lapse of about four and a half years. As per the case of the petitioner, he has come to know about the Review Award only

on 15.12.2008 when the respondent filed counter affidavit in one of the present two petitions i.e. 2185/2008 stating that Review Award has been made.

The stand taken by the petitioner to explain the delay is unbelievable. As per petitioner's own case, petitioner had filed representation for release of balance amount under award dated 01.10.2003/supplementary award dated 27.10.2004 before the respondent for the first time on 08.01.2007. It is unimaginable that if a person has to take payment and that too of a heavy amount, he will not take steps for 2-3 years as has been done in the present case. The above shows that petitioner had the knowledge that payment awarded to him under supplementary award has been adjusted with the review award dated 14.07.2004 due to which petitioner had not taken any steps earlier. Further, stand of petitioner is that he has come to know of Supplementary Award only on 18.12.2007 when information was supplied to him under the Right to Information Act. Even this has been wrongly stated. The representation dated 08.01.2007 annexed with the petition contradicts the said stand. The same shows that petitioner had already requested respondent in this regard. Thus, the stand taken by the petitioner to explain the delay is not believable. Petition is liable to be dismissed on the ground of delay and laches alone.

Further, learned counsel for the respondent has submitted that Review Award is made in respect of other land

owners i.e. about 11 in number. Their compensation for illegal structures is also reduced. None has challenged the same despite five years having passed.

The question of large public amount is involved. The exercise of jurisdiction under Article 226 of the Constitution of India is in the discretion of the court. We do not find it a fit case to exercise such a discretion in the present case.

We may mention that we have gone through the judgment relied upon by counsel for petitioner. The same have no relevancy to the facts of the present case.

The prayer of petitioners about making reference to the Civil Court for adjudication is not pressed at the time of arguments. Accordingly, the same is not dealt herewith.

Both the writ petitions have no merits and the same are dismissed.

VEENA BIRBAL, J.

SANJAY KISHAN KAUL, J.

March 4th, 2010
kks/ssb