

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

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WP(C) NO.18138-39/2006

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Date of decision: 22nd July, 2010

SATENDER & ANR.

..... Petitioners

Through: Mr. Mahipal Singh Dral, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Ruchi Sindhwani & Ms. Bandana Shukla, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioner No.1, claiming to be entitled to agricultural land measuring 1 Bigha 2 Biswa on account of his 1/15th undivided share in joint holding total measuring 16 Bigha 12 Biswa in Khasra Nos.27//24/1 (2-04), 48//6(4-16), 7 (4-16) & 8 (4-16) situated in the Revenue Estate of village Tikri Kalan, Delhi, has filed this petition for issuance of direction to the respondent no.3 Sub Registrar of Assurances, Punjabi Bagh, Delhi to register and deliver the Sale Deed executed by the petitioner No.1 of the said land in favour of petitioner No.2 and presented for registration, without insisting upon status report / NOC from the respondent No.4 Competent Authority under the Delhi Land (Restrictions on Transfer) Act, 1972. The petitioner in the alternative seeks mandamus to the respondent No.4 to issue the said NOC. The case of the petitioner is that he on 14th March, 2006 agreed to sell his aforesaid land to the petitioner No.2 and received advance sale consideration and applied for

NOC; that on 17th March, 2006 entire sale consideration was received and a Sale Deed presented for registration; that the Sub Registrar of Assurances however kept the Sale Deed pending for want of NOC / status report from the competent authority to the effect that no notification under Section 4 of the Land Acquisition Act, 1894 had been issued qua the said land; that on 15th May, 2006 NOC, was denied in violation of the Law, Rules and Regulations. The petition itself admits that on 20th June, 2006, notification under Section 4 of the Land Acquisition Act was issued with respect to the land aforesaid. The petition has been filed contending that since on the date of the presentation of the Sale Deed for registration, there was no notification for acquisition, the Sale Deed ought to have been registered. Reliance in the petition itself is placed on the order dated 29th March, 2006 in WP(C) No.2609-10/2006 titled **Satish Kumar Vs. The Sub Registrar-IX** in which this Court held that there is no power to require all those intending to sell agricultural land to obtain NOC; NOC under the Delhi Lands (Restrictions on Transfer) Act, 1972 is required only when the land is under acquisition. Reliance is also placed on order dated 1st September, 2006 in WP(C) No.9541/2006 titled **Narendra Kumar Jain Vs. Sub Registrar-IX, Delhi** following the earlier order.

2. Notice of the petition was issued and a counter affidavit has been filed. On 28th April, 2010, the counsel for the petitioner informed that it had been learnt by the petitioner that the Land Acquisition Collector will start paying compensation for acquisition of the land aforesaid on or before 5th May, 2010. However, on 4th May, 2010, the counsel for the respondents informed that compensation was not likely to be disbursed for some time.

3. The counsel for the petitioner besides on the judgments aforesaid of this Court, during the hearing has also relied upon the order dated 14th September, 2005 in WP(C) No.13035/2005 titled **M/s Breme Developers Pvt. Ltd. Vs. Govt. of NCT of Delhi** holding that the permission to sell could not be denied owing to sale being in violation of Section 33 of the Delhi Land Reforms Act, 1954. Reference is also made to **O.P.C. Jain Vs. A.D.M., (LA) 42(1990) DLT 478** where the Division Bench of this Court

also had held that NOC under the Delhi Lands (Restrictions on Transfer) Act, 1972 is not required when the land is not notified under the Land Acquisition Act.

4. The controversy in the present case is within a narrow compass. What has to be adjudicated is whether as of today or for that matter even on the date of filing of the writ petition, the first relief claimed of issuing direction for registration of the Sale Deed could have been issued when the land as on that date admittedly stood acquired.

5. Section 4 of the Delhi Lands (Restrictions on Transfer) Act, 1972 (1972 Act) prohibits transfer of any land which is “proposed to be acquired”. The effect of allowing the writ petition would be to direct land to be transferred in violation of Section 4.

6. I have also considered whether the petitioner is entitled to the relief for the reason of there being no notification for acquisition on the date when the Sale Deed was presented for registration. Even though in the judgments aforesaid, this Court has held that NOC cannot be insisted upon as a matter of routine and is required only when the land is proposed to be acquired, the fact remains that the Registrar of Assurances, cannot have knowledge whether land sought to be transferred by registration of document is likely to be acquired or not. No fault can therefore be found with the action of the Registrar of Assurances in the present case, of enquiring from the concerned authorities as to whether the land was proposed to be acquired or not. The said authorities again, even though there was no notification for acquisition till then, in view of the land forming part of the scheme of acquisition of land for planned development of Delhi, did report that the land was proposed to be acquired. The question which arises is whether in the absence of a notification for acquisition, such report could have been returned and whether the Registrar in view of the said report was justified in refusing registration.

7. I find that Section 5 of the 1972 Act providing for application for NOC qua the land proposed to be acquired uses the expression “the land is

needed or is likely to be needed” in providing for the grounds whereon the NOC shall not be granted. It thus appears that even if there is no notification for acquisition but if the land is likely to be needed for effective implementation of a scheme for acquisition of land for the planned development of Delhi, then the land would fall within the definition of “land” in Section 4 of the 1972 Act. It thus cannot be said that the refusal of registration was bad.

8. There is another aspect of the matter. Section 6 of the 1972 Act provides for the appeals against the order of the Competent Authority. In fact it is one of the objections of the respondents to the maintainability of this writ petition that the same does not lie in view of the alternative remedy of appeal. Even if there was any error in the order reporting to the Registrar that the land was likely to be acquired and thus should not be allowed to be transferred, had the petitioner availed of the alternative remedy of appeal thereagainst, in retrospect, considering the short span of time within which the notification of acquisition was issued, it can be said with near certainty that during the pendency of the said appeal, the land would have been acquired. The appeal would also thus have been dismissed. Merely because the petitioner instead of preferring the appeal has preferred this writ petition, he cannot be given any benefit.

9. Section 8 of the 1972 Act prohibits the Registrar of Assurances from registering a document in contravention of the provisions of the Act. Section 9 of the 1972 Act makes contravention of the provisions of the Act punishable with imprisonment for a term extending to three years. Considering all the said provisions, it cannot be said that there was any error in the refusal of registration and challenging which this petition has been filed. It thus has to be necessarily held that the petitioner is not entitled to the first relief claimed of direction for registration of the Sale Deed. As far as the alternative relief of issuance of NOC is concerned, it is informed that now the award even with respect to the land has been made. No purpose would be served in now directing the respondents to consider the application of the petitioner for grant of NOC.

10. The petitioners are therefore not entitled to any relief. The petition is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

22nd July, 2010

‘gsr’

(corrected & released on 25th November, 2010)