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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 357/2001

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21st February, 2011

S.N.KAUL & ORS

..... Appellants

Through: None.
VERSUS

M.C.D & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the 'Regular Board' of this court since 3.1.2011. Today, the matter is effective item no.6 on the 'Regular Board'. No one appears for the parties. I have, therefore, perused the record and am proceeding to dispose of the appeal.

2. By this regular first appeal under Section 96 of the Code of Civil Procedure, 1908, the appellants impugn the judgment and decree dated 20.7.2001 whereby the suit of the appellants/plaintiffs challenging the acquisition of the land under the Land Acquisition Act, 1894 was dismissed. Suit was dismissed at the initial stage itself being not maintainable. The only issue before the trial court was whether the suit

land was or was not covered under the subject land acquisition notifications. The appellants claimed that only 1000 thousand sq. ft. stood acquired however, as per the relevant notifications in the Award the acquisition was of the complete land including the suit land. The subject land falling in the Khasra No.52/12 had been acquired vide Award No.80-E/70-71 (Supplementary) after notification was issued under Section 4 on 23.1.1965 and declaration was issued under Section 6 on 7.12.1966. The award was passed on 9.1.1981 and physical possession of the said land was taken over and handed over to the Delhi Development Authority (DDA) on 23.9.1981. In fact, DDA issued notification under Section 22(1) of the Delhi Development Act on 19.11.1981. The trial court has extensively relied upon the decision of the Supreme Court in the case of ***State of Bihar Vs. Dirender Kumar and others (1995) 4 SCC 229*** to hold that a civil suit is barred whereby the notification of acquisition was challenged and it is only the High Court which can look into such aspect. The relevant paragraphs of the impugned judgment are paras 6 to 8 which read as under:-

6. I have heard these submissions and I have also considered the cited judgments and I have perused the record. Though it was argued that the plaintiffs were not challenging acquisition proceedings, it is clear from the prayer that what they are seeking is a declaration that the sit land comprised in khasra no.52/12 was not covered under Award no.80-E/70-71 as it is their case that only 1000 sq. feet stood acquired out of this land. When the case of the defendants including the acquiring authority defendant no.3, is that khasra no.52/12 measured 12 bigha 5 biswas and that the entire land stood acquired vide Award no.80-E/70-71 and the Award has also been placed on the record then it is clear that the plaintiffs are in fact questioning the acquisition of the entire land in khasra no.52/12 and seeking to nullify such acquisition of

land exceeding to 1000 sq. feet which alone, according to them had been acquired. The Award nowhere says that only 1000 sq. feet stood acquired. Similarly the plaintiffs have sought an injunction against the defendants from dispossession and from demolition of the structures in khasra no. 52/12, village Kishangarh. The judgment relied upon by the defendants referred to hereinabove covers the present case squarely.

7. In the case before the Hon'ble Supreme Court reported in 1995, 4 SC 229 certain lands had been acquired for public purposes of construction of houses by the Housing Board and possession was also taken by the Acquiring Authority and handed over to the Housing Board on the same day i.e. 22.3.57. Apparently there were several encroachments on the land and steps were taken by the Housing Board to remove the encroachers. As argued, a suit was preferred, in which an application under Order 39 Rule 1 CPC had also been filed. The Subordinate Judge and the Hon'ble High Court granted interim relief, the first restraining the appellants from dispossessing the respondent till the disposal of the suit without causing any disturbance to the plaintiff/respondent's possession and enjoyment of the suit land or demolishing of structures standing thereon and the later by directing status quo to be maintained. The Hon'ble Supreme Court observed that the question was whether a civil Suit was maintainable and whether the interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice under Section 9 of the Act and delivered to the beneficiary. The Hon'ble Supreme Court observed that the Land Acquisition Act was a complete Code in itself and was meant to serve public purpose and "that by necessary implication, the power of the Civil Court to take cognizance of the case under Section 9 of the CPC stands excluded". It therefore, held that when the Civil Suit itself was not maintainable, there was no prima facie triable issue for grant of interim relief and thus set aside the order of the Subordinate Judge and Hon'ble High Court granting interim relief as noticed above.

8. The present case is also one for injunction against dispossession and demolition as was the case before the Hon'ble Supreme Court in that case that the Civil Court has held, was not maintainable in a Civil Court. It was laid down by the Hon'ble Supreme Court in that case that the Civil Court had no jurisdiction to go into the question of validity or illegality of the notification under Section 4 and

declaration under 6 and it was the High Court alone which could look into such matters in proceedings under Article 226 of the Constitution. By a notification under Section 4 and 6 of the Land Acquisition Act, the government announces its intent to acquire large extracts of land as mentioned in the notification. Now the plaintiffs seek a declaration that their land was excluded from such notification and thus from such acquisition. This is nothing but a challenge to the validity of the notifications under Section 4 and 6 of the Land Acquisition act, which questions a Civil Court cannot determine. By challenging the extent of land acquired and limiting the acquisition to 1000 sq.yds., in the acquisition proceedings, the validity of the proceedings are under challenged and such a challenge cannot be entertained in a civil Court as per the Hon'ble Supreme Court. There is no force in the contention of the learned counsel for the plaintiffs that the issue cannot be disposed of as a preliminary issue and that it was a matter of evidence. Evidence would be a stage that would come only if the suit was maintainable. Since, the Civil Court cannot decide any challenge to acquisition proceedings, there is no requirement for looking into the evidence to see whether the land stood acquired or not. The Award no.80-E/70-71 (supplementary) is a public document and a reference thereto would show that the khasra no.1131 (new no.52/12 about which there is no dispute) measured 12 bigha 5 biswas, out of this 12 bigha 5 biswas the plaintiffs wants to limit the acquisition to 1000 sq.feet. This is a straight challenge to the acquisition proceedings and is barred by law. There is no fact calling for enquiry as to whether the Award was only in respect of 1000 sq.feet since it is clearly mentioned that it is in respect of 12 bighas and 5 biswas. Therefore, this pleas of the learned counsel for the plaintiffs is rejected." (Emphasis added)

3. I completely agree. The trial court has rightly observed that the notification does not specify only land of a thousand sq. ft. as was alleged by the appellants/plaintiffs. In fact, the acquisition proceedings were complete and the government had become owner of the subject land. The decision in the case of **Dirender Kumar (supra)** therefore squarely applies.

4. In view of the above, I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this court in appeal. The appeal being devoid of merit is therefore dismissed leaving the parties to bear their own costs. Trial court record be sent back. Interim orders stand vacated.

FEBRUARY 21, 2011
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VALMIKI J. MEHTA, J.