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

+ **CS(OS) 1697/2010 and I.A. No. 16045/2010 (u/O 7 R 11
CPC by D-2)**

Decided on: 23rd November, 2011

BHAGWATI DEVI Plaintiff
Through: Mr. Pradeep Ranjan Tiwary
and Mr. Praffula Ranjan
Tiwary, Advs.

versus

THE GOVT OF NCT OF
DELHI & ANR Defendants
Through: Mr. Ravjyot Ghuman, Adv.
for D-1.
Ms. Geeta Mehrotra, Adv.
for D-2.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J. (ORAL)

1. Plaintiff has filed this suit for declaration and permanent
injunction with the following main prayers:-

“a. Declare that the approximately land

measuring 4 bigha in khasra no. 694 out of 6 bigha 6 biswas situated in Village Madipur is free from land acquisition proceeding and the plaintiff is absolute owner of the property.

b. The suit land should be denotified by the respondent.”

2. The land involved in this case is khasra no. 694 (6-6) situated in village Madipur. Land in question was acquired by the Government way back in the year 1959 vide notification dated 13th November, 1959 issued under Section 4 of the Land Acquisition Act, 1894 (for short hereinafter referred to as ‘the Act’). After following the due procedure as laid down under the Act, Land Acquisition Collector (LAC) has passed Award No. 1691 on 29th April, 1964. Possession of the land was taken on 29th April, 1964 (page nos. 31 to 36). In nutshell, case of the plaintiff as set out in the plaint is that actual physical possession of land admeasuring 2 bighas and 4 biswas was taken vide Kabza Karyawahi dated 23rd November, 1977, thus, the land acquisition proceeding itself lapsed. Averments made in the plaint and the documents placed on record show that the plaintiff and her late husband had raked up this issue in earlier litigations also but their this plea was negatived up to the High Court.

Plaintiff cannot be allowed to rake up same issue again and again by initiating one or the other litigation at different forums, inasmuch as, this suit challenging the acquisition proceedings is not maintainable.

3. Plaintiff's husband, Late Shri. Kishan Lal, had filed a suit for permanent injunction before the Sub Judge, Ist Class, Delhi. The said suit was dismissed on 19th February, 1987. Husband of the plaintiff filed an appeal bearing RCA No. 69/1987 which has been dismissed by the Additional District Judge, Delhi vide judgment dated 2nd April, 1994. In para 4 of the judgment, Additional District Judge has observed as under:-

“4.It may be stated at the very outset that the suit of the plaintiff was liable to be dismissed out rightly without going into merits since plaintiff did not come to the court with clean hands and concealed the material facts from the court. The plaintiff deliberately stated false facts before the court. In para 1 of the plaint he stated that Kh.No.693 belongs to him. He concealed the fact in the plaint that the land about which he was talking had been acquired vide an award by LAC. The award placed on the record shares that both Khasra No. 694 measured 6 bigha and 694 measured 1 bigha 6 biswas and Kha No. 694 measured 6 bigha 4 biswa. The plaintiff also made false averments in the plaint about the construction of temple in 1958. In this cse the award shows that notification u/s 4 was

made on 13.11.59 and the Notification u/s 6 was made on 10.6.63. The assessment of compensation by the LAC was done thereafter and the plaintiff being one of the claimant had filed his claim before the LAC and the name of the plaintiff is mentioned at SL.No.11 page 23 of the award. Plaintiff had claimed compensation @ Rs.40/- per sq. yds. The structure and the trees which were existed at the time of acquisition of this land have been enumerated in detail by the LAC in the award and the LAC has assessed the value of each structure and the tree and well which was there in the land at that time. No structure as stated by the plaintiff in the plaint was in existence at the time of working of the award. The collector has assessed compensation even in respect of khokhas, semi-pucca room, boundary wall, etc. which were found there on the acquired land at the time of acquisition. After the LAC had announced the award, if the award was not acceptable to the plaintiff or if the compensation in respect of his structure has not been assessed, he could not have challenged the award on this ground or he could have objected to the compensation nor having been assessed in respect of the structure. But the plaintiff did not to do so nor there is any allegation. All this shows that there was no structures in existence at the time when the Notification u/s 4 or 6 was made or when the compensation was assessed by the LAC. The possession report of the land which is dt. 27.4.64 also shows that there was no such structure as is alleged by the plaintiff in his plaint. The plaintiff has not disputed the correctness of the award or the possession report. Rather the plaintiff has relied upon the possession report to gain

support that only symbolic possession of his property was taken. This possession report shows that the actual physical possession of Kh.No.691 was taken on 27.4.64. As far as Kh.No.694 is concerned on some part of it there were jhuggies. The actual physical possession of the vacant part of the land was taken and the symbolic possession of part in which juhggies were there was taken. Thus the possession report and the award belies the stand taken by the plaintiff in the plaint. Plaintiff know the existence of the award, the taking of possession of LAC but still the plaintiff came to the court with dirty hands, did not state the true facts and deliberately made false assertions in the court. I consider that the suit of the plaintiff and the appeal of the appellant/plaintiff are liable to be dismissed solely on this ground. Hon'ble Supreme Court in CA No.2676 of 1979 decided on 9.12.80 held that if a party comes to the court and does not state true facts and only brings to the notice of the court doctored facts such a party should not be heard on merits and the appeal should be dismissed to prevent an abuse of process of court. The Hon'ble Supreme Court observed that the truth should not be made a casually and a person should not be allowed to mis-use the judicial process."

(emphasis supplied)

4. Regular Second Appeal No. 54/1994 was filed against the order of Additional District Judge, which has been dismissed by a Single Judge of this Court on 10th July, 2002. Even in the said appeal, plaintiff had alleged that possession was not taken but this fact was negated. Learned Single Judge while dismissing the

appeal observed as under:-

“Forgetting about the technicalities of not filing a decree sheet in substance it appears that the appeal is a abuse of the process of the Court for three reasons. Firstly, the plaintiff is guilty of suppression of material facts, secondly in terms of judgment in State of Bihar V.Dhirendra Kumar and Ors. (1995) 4 SCC 229, the Civil Court has no jurisdiction to go into the question of validity of legality of notification under Section 4 or of declaration under Section 6, as the Land Acquisition Act is a complete code in itself and is meant to serve public purposes. Secondly, possession of the acquired land had already been handed over to the concerned authorities, Civil Court could not grant interim injunction or otherwise. In Tamil Nadu Housing Board V.A.Viswam (1996) 8 SCC 259 in Para ‘9’ the Supreme Court observed as under:-

9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by this LAO in presence of witnesses signed by hi/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some case the owner/interested person may not cooperate in taking possession of the land.”

In Balmokand Khatri Educational and

Industrial Trust, Amritsar Vs.State of Pubjab and Ors. (1996) 4 SCC 212, it has further been held that:

“The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

Thirdly, in the aforementioned circumstances, the finding of the learned Trial Court and the learned Appellant Court that the possession had been duly handed over was not unjustified.”

5. The said order attained finality as no further appeal had been filed against it.

6. It may be noted here that a Civil Writ Petition no. 2604/2000 titled “Resident Welfare Association vs. Delhi Development Authority” was filed in this court for removal of encroachment on the acquired land which was disposed of by a Division Bench of this Court vide order dated 18th September, 2002. Plaintiff has admitted in para 29 of the plaint that the son of the plaintiff namely, Naresh Kumar was a party in the writ petition. DDA was directed to remove the encroachment and take action against the erring officials of the DDA. Relevant directions in this regard are

as under:-

“In view of the submissions of learned counsel for the parties and keeping in view of the fact that the encroachment on public land must be removed, we direct the respondent - Delhi Development Authority to take action against the official who failed to prevent the encroacher from re-occupying the land. The action taken against the person responsible for the encroacher to take over the land shall be placed before us. The Delhi Development Authority shall also take action against the encroacher in accordance with law.”

7. It appears that after the death of her husband, plaintiff made a representation under Section 48 of the Act before the Government for de-notification of acquired land. Thereafter, she filed a Writ Petition (Civil) No. 3252/2005 in this Court, which was also dismissed on 3rd March, 2010 by a Single Judge of this Court. The order reads as under:-

“1. The prayer in this petition is that pending the decision on the representation made by the Petitioner for de-notification of the acquired land under Section 48 of the Land Acquisition Act 1894 (LA Act), the Respondents be restrained from demolishing the residential premises and temple situated over the land in Khasra No. 694 at Madipur Vilage, New Delhi (“hereinafter referred to as the acquired land”).

2. The land in question was acquired under notification dated 13th November 1959 issued under Section 4 of the LA Act of the land measuring 6 bigha 4 biswas. It is stated that the Respondent took physical possession of the land measuring 3 bighas in 1975. It is stated that constructed portion comprising the residential houses for four sons of late Shri Kishan Lal and to whom the land belonged to, died in 1998 and house constructed for the Petitioner (his wife), “samadhis of forefathers, temple of Hanumanji and Lord Shiva certain trees were left out.”

3. In the year 2002, the officials of the Respondent came to house of the Petitioner for demolishing the structures. They were however unable to show any legal basis for the action. According to the Petitioner, no compensation was received by them for the portion of the property under their occupation. Apprehending that the Respondent would again come to demolish the premises, the Petitioner made a representation dated 5th January 2005 to the Lieutenant Governor under Section 48 of the LA Act seeking denotification of the land in question.

4. By an order dated 13th March 2006, this Court directed that during the pendency of the writ petition the Petitioner should not be dispossessed subject to the condition that no further construction would be carried on in the acquired land.

5. The Delhi Development Authority (DDA) which was impleaded by an order dated 31st July 2009 in CM Application

No. 15865 of 2008 in the present writ petition, has filed another application being CM No. 15866 of 2008 seeking vacation of the interim order dated 13th March 2006. Along with this application, the DDA has placed on record a copy of an order dated 10th July 2002 passed by the learned Single Judge of this Court in R.S.A. No. 54 of 1994 and order dated 18th September 2002 passed by the Division Bench of this Court in W.P. (C) No. 2604 of 2000 (Resident Welfare Association v. Delhi Development Authority). It is stated that it has already been held by this Court in its decision dated 10th July 2002 that as far as the present premises is concerned the possession has already been taken over by the authorities of the acquired land. That order has attained finality. In addition, an order has been passed by the Division Bench in W.P. (C) No. 2604 of 2000 on 18th September 2002 directing the Delhi Development Authority to take action against all the encroachers and re-occupy the land by it in accordance with the lay out plan.

6. The basis for making a representation for de-notification of the land under Section 48 LA Act is that the possession has not been parted with yet by the land owner. If in the present case, it is shown that possession is no longer with the Petitioner, then a representation under Section 48 of the LA Act for denotifying the land cannot be entertained.

7. For some reason, which remains to be explained by the Petitioner, the fact that her late husband Shri Kishan Lal had filed a suit in respect of the very same land and the dismissal of the said suit was not mentioned

in the present petition. Also, not mentioned was the fact that against the dismissal of the said suit, an appeal was filed which also stood dismissed. Thereafter Shri Kishan Lal filed R.S.A. No. 54 of 1994 in this Court, which came to be dismissed by an order dated 10th July 2002. This Court negated the plea of the Shri Kishan Lal that in terms of the possession report, only symbolic possession had been taken. Categorical finding was that the possession of the acquired land had already been handed over to the concerned authorities. Thereafter in conclusion it was held that “what has been allegedly done by the plaintiff is in gross violation of the law and the retention of possession cannot be justified.” The said order attained finality with no further appeal being filed against it.

8. In addition, the Division Bench of this Court passed an order on 18th September 2002 in W.P. (C) No. 2604 of 2000 directing the DDA to remove the encroachment over the acquired land which is the subject matter of the present writ petition as well. The above facts and the orders passed by this Court have been suppressed by the Petitioner in the present writ petition.

9. In view of the above factual and legal position, it is not possible for this Court to grant the Petitioner any relief as sought by her in this petition.

10. The writ petition is accordingly dismissed. The interim order passed by this Court on 13th March 2006 stands vacated. CM No. 15866 of 2008 stands disposed of.”
(emphasis supplied)

8. Plaintiff preferred LPA No. 378/2010 which has been disposed of as not pressed on 26th May, 2010. It appears that during the course of hearing senior counsel appearing for the appellant sought leave of the court to withdraw appeal to file a suit for establishment of his right, title and interest in the property. The Division Bench has categorically observed in the order that only statement of learned counsel for the appellant had been recorded and the court had not expressed anything about the tenability of the suit.

9. After completing earlier rounds of litigation, plaintiff has filed present suit re-agitating the same issue which has already been settled in the earlier litigations. Issue of possession has been already decided as is evident from the orders passed in the earlier suit filed by Late Shri. Kishan Lal, husband of the plaintiff. This is nothing but abuse of process of court.

10. In the present case, the Award passed about 57 years ago still holds the field and has attained finality. Once the award has been passed, possession taken and attained finality all original owners stand divested of their right, title and interest in the acquired land and the same vests in the Government/beneficiaries. Acquisition of land has not been de-notified. The plaintiff cannot

now re-agitate the issue of possession in respect of acquired land which otherwise has been settled in the earlier litigations. That apart, a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, Award and ancillary proceedings. Land Acquisition Act is a complete code in itself and provides all kinds of remedies as may be available to a person whose land has been acquired, thereby barring the jurisdiction of a civil court to take cognizance of cases arising under the Act.

11. In *Laxmi Chand vs. Gram Panchayat Kararia* (1996) 7 SCC 218, it has been held that the procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification under Section 4 and declaration under Section 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of

the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken, it stands vested under Section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from the acquisition. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts viz. the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court. Similar opinion has been expressed by the Supreme Court in State of Bihar vs. Dhirendra Kumar & Ors. 1995 (3) SCALE 118 wherein it was held that the Act is a complete code in itself and meant to serve public purpose. It was further held that the power of the civil court to take cognizance of the case under Section 9 CPC stands excluded and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6 of the Act, except

by the High Court in a proceeding under Article 226 of the Constitution. In S.P.Subramaniya Shetty and Ors. vs. Karnataka State Road Transport Corporation and Ors. (1997) 3 SCR 370 Supreme Court held that the notification had become final and the proceedings had attained finality, the civil suit was not maintainable.

12. In Nagin Chand Godha v. Union of India and Ors. 2003(70) DRJ 721 this Court observed that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a ground to contend that possession is not taken. He cannot subsequently come to the Court to say that actual possession is not taken and therefore, he should be protected and land be de-notified.

13. For the foregoing reasons, in my view, suit is without any cause of action, inasmuch as, barred by law and is nothing but gross abuse of process of law.

14. Suit is dismissed with cost of ₹50,000/- (Rupees Fifty Thousand Only) to be deposited with the Registrar General of this Court within 4 weeks. Cost to be utilized for Juvenile Justice. In case cost is not paid within four weeks, Registrar General to

recover the same in the same manner in which land revenue is recovered.

15. All pending applications are also disposed of as infructuous.

A.K. PATHAK,J

NOVEMBER 23, 2011

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