

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

Date of decision: 14th October, 2011.

+ **W.P.(C) 6623/2011**

% **SURYA PRAKASH GUPTA** **....Petitioner**

Through: Mr. Sanjeev Sachdeva, Sr. Adv. with
Mr. Gaurav Gupta, Mr. Rook Ray &
Ms. Priyam Mehta, Advs.

Versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Sanjay Kumar Pathak, Adv. for
R-1.
Ms. Shobhana Takiar, Adv. for R-2.
Mr. Kapil Dutta, Adv. for R-3.

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? | Not Necessary |
| 2. | To be referred to the reporter or not? | Not Necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not Necessary |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a resident of the residential colony of Vasant Kunj, New Delhi, claims rights in land ad-measuring 2 Bighas and 4 Biswas (2200

sq. yds.) in Khasra No.156 situated in village Lado Sarai, Delhi. He admits, that the said land was notified under Section 4 of the Land Acquisition Act, 1894 vide Notification dated 13.11.1959; that a declaration under Section 6 of the Act with respect to the land was notified on 30.03.1967; that upon challenge, the said acquisition was quashed vide order dated 30.11.1970; that thereafter on 13.04.1971 another Notification under Section 4 of the Act with respect to the land was issued followed by declaration under Section 6 on 16.09.1971; that the challenge to the same failed, finally on 24.03.2005.

2. The petitioner claims to have “purchased” the said land; neither any date of “purchase” nor any particulars thereof are pleaded; however, the petitioner as annexures to the petition has filed photocopies of Power of Attorney, Will, Memorandum of Understanding in his / her favour. The petitioner further claims to have been put into possession of the land. It is further pleaded that the construction on the land was thereafter sealed by the respondent No.3 MCD.

3. The petitioner avers that employees of respondent No.2 DDA, on 04.07.2011, started plantation activity around the land and this petition was filed on 09.09.2011 averring that the respondent No.2 DDA had started digging the boundary wall around the land in order to build its own boundary wall and thereby take forcible physical possession of the property.

4. The petitioner in this petition has sought to restrain the respondent No.2 DDA from constructing a boundary wall and from taking over possession of the property.

5. When the petition came up before this Court first on 09.09.2011, the senior counsel for the petitioner stated that the land adjoining to the said land has been de-notified under Section 48 of the Land Acquisition Act; that the right of the petitioner to apply for de-notification under Section 48 of the Act will be extinguished if the petitioner is dispossessed from the land and would also affect the claim of the petitioner for compensation.

6. Notice of the petition was issued and it was observed that the rights if any of the petitioner shall remain unaffected by the acts of the respondent

No.2 DDA.

7. The counsel for the respondent No.2 DDA on 16.09.2011 informed that the acquisition of the subject land was vide the same Notification as subject of ***Nagin Chand Godha Vs. Union of India*** 2003(70) DRJ 721 (DB) and in which judgment it was recorded that symbolic possession of the entire land had already been taken.

8. The counsel for the respondent No.2 DDA on 29.09.2011 also produced before the Court the record of taking over of the possession of the land on 22nd September, 1986 i.e. much prior to the filing of the present petition. However, the senior counsel for the petitioner on that date citing para 16 of the ***National Thermal Power Corporation Ltd. Vs. Mahesh Dutta*** (2009) 8 SCC 339 contended that taking over symbolic possession was not sufficient and unless actual possession was taken over, the provision of Section 48 (supra) will continue to apply. However, this Court on a reading of the said judgment did not find any merit in the contention of the petitioner. Reference was also made to ***Dr. Rajbir Solanki Vs. Union of***

India 2008 (101) DRJ 577 (DB) and *Kamaljeet Singh Vs. State* 2008 (101) DRJ 582. Attention of the senior counsel for the petitioner was also invited to *Narmada Bachao Andolan Vs. State of Madhya Pradesh* AIR 2011 SC 1989 laying down in para 124 that no strait-jacket formula can be laid down for taking the possession of the land and it would depend on the facts of each case. It was thus observed by this Court on 29.09.2011 that the burden of proof to establish, by leading clear and cogent evidence, that possession had in fact not been taken over was on the petitioner and discharge of which burden required recording of evidence and for which writ proceedings are not appropriate remedy. The senior counsel for the petitioner on that date sought time to take instructions with respect to the document produced of taking over of the possession. The matter was adjourned to today.

9. The senior counsel for the petitioner today seeks further time.

10. The matters cannot be adjourned and kept pending in such fashion. Adjournment as such has been refused. The senior counsel for the petitioner then contends that though the writ petition may be dismissed but since a

representation has been made under Section 48 of the Act and is pending, the observation earlier made that the factum of taking over possession will not affect the rights if any of the petitioner under Section 48 be continued. However, in the face of document of taking over of the possession and without the petitioner establishing that possession was not so taken over (as held in para 44 of *National Thermal Power Corporation Ltd.* (supra) that the petitioner is required to lead clear and cogent evidence to establish to the contrary), such observation cannot be made. The Supreme Court in *State of Uttaranchal Vs. Sunil Kumar Vaish* MANU/SC/0941/2011 has deprecated the practice of keeping the issues alive in such manner. Any such observation by this Court has the potential of leading the authorities dealing with the representation under Section 48 to believe that this Court required them to treat the matter as if possession has not been taken when the petitioner has not even taken the appropriate proceedings to establish the same.

11. The senior counsel for the petitioner then contends that the said land is part of the unauthorized colony which is subject matter of regularization. It

is contended that the respondents are prohibited by the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 also from taking over possession.

12. However, the same presumes that possession has not been taken when in fact it has been. Moreover, the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 is intended to provide protection to residents of unauthorized colony. The petitioner as aforesaid is not a resident of the aforesaid land but is a resident of the colony of Vasant Kunj. No benefit thereof can also be given to the petitioner.

13. Mention may also be made of the recent judgment dated 11.10.2011 of the Apex Court in *Suraj Lamp & Industries Vs. State of Haryana* MANU/SC/1222/2011 laying down that an Agreement to Sell / Power of Attorney / Will transaction does not convey any title or create any interest in an immovable property and cannot be recognized as deeds of title. For this reason also, the petitioner cannot be said to be having any right in the land. The petitioner is clearly a interloper who claims to have acquired rights in

land after the challenge to acquisition had failed and having already been dispossessed, has no equity in his favour to stall a public project.

14. There is thus no merit in the petition. The same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

OCTOBER 14, 2011
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