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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 01.05.2012

Judgment delivered on: 08.05.2012

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W.P.(C) 4855/2011

M/s. TERRIFIC STEEL PVT. LTD.

..... Petitioner

versus

THE LAND ACQUISITION COLLECTOR (WEST)
AND ANR.

..... Respondents

Advocates appeared in this case:

For the Appellants : Mr. Rajeev Saxena & Mr. Rohit Singha, Advocates

For the Respondents : Mr. Sanjay Kumar Pathak, Advocate for R-1

Mr. Sumit Bansal and Ms. Sumi Anand, Advocates for
R-2

CORAM:-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The captioned writ petition is directed against the order dated 28.12.2010 (in the nature of amendment to the award passed under section 11 of the Land Acquisition Act, 1894), passed by the Land Acquisition Collector (West) (in short, LAC) in award bearing no.03/DC(W)/2008-2009 (in short the award). The petitioner is aggrieved by the fact that the impugned order directs sharing of compensation awarded by virtue of acquisition of the property, being: Khasra no.460, Village Mundka, Delhi (hereinafter referred to as the said property), admeasuring 2 bighas 3 biswas i.e., 2150 sq. yds. between itself and respondent no.2. It is the case of the petitioner before us that the compensation awarded qua

the aforementioned property should, in its entirety, be paid to it, to the exclusion of respondent no.2.

2. This contention arises in the background of the following facts, which are required to be noticed in order to adjudicate upon the assertions made in the writ petition.

3. The aforementioned property was acquired by the petitioner pursuant to the participation of one of its directors in a public auction carried out pursuant to a decree dated 29.07.2004 obtained by an entity, by the name of Bhushan Steel and Strips Ltd. (in short Bhushan Steel). Bhushan Steel had instituted a suit being : CS(OS) 1886/2003 against one Jai Kishan Bansal, proprietor of J.K. Bansal Industries. The decree was for a sum of Rs.26,72,262/- with pendente lite and future interest at the rate of 9% p.a. till the date of realization, in addition to costs. Pursuant to the decree having been obtained by Bhushan Steel, an execution petition was filed which was registered as : EP 92/2005. In the said execution proceedings, this court by an order dated 31.05.2005 attached the aforementioned property. Since, the judgment debtor, i.e., Sh. Jai Kishan Bansal failed to satisfy the decree, the aforementioned property was put to auction.

3.1 An order for sale proclamation was made with conditions stipulated thereon to which we would advert to the extent relevant in the later part of our judgment.

3.2 In pursuance of the said sale proclamation, the said property was put to a public auction on 18.12.2006. It is in the public auction that the petitioner through Sh. Rakesh Chaturvedi purchased the aforementioned property. The petitioner paid a sum of Rs.46 Lakh against a reserve price of Rs.36 Lakh fixed by the court auctioneer qua the said property.

4. It appears that in the meanwhile the aforementioned property as a part of a larger parcel of land was acquired through aegis of respondent no.1, for the purposes of use of Delhi Metro Rail Corporation Ltd. Evidently, possession of the acquired land, which included the said property, was taken over on

26.11.2007.

5. In the meanwhile, an interim application was filed by respondent no.2 in the execution proceedings claiming 1/5th share in the aforementioned property. A Single Judge of this court noted in the proceedings of 19.12.2007 that, at no stage did the judgment debtor ever disclose the fact that he was not, the only owner of the aforementioned property. In another words, there was no disclosure of the fact that the property was co-owned by other persons, which included the petitioner. The court, however, noticing the fact that the judgment debtor had 1/5th share in the aforementioned property, confirmed the sale in respect of the said 1/5th share in the aforementioned property in favour of the auction purchaser i.e., the petitioner before us. In so far as other aspects were concerned, the court adjourned the matter to 22.2.2008.

6. In view of the order dated 19.12.2007, a certificate of sale dated 12.2.2008 was issued in favour of the petitioner qua 1/5th share in the aforementioned property.

7. At the hearing held on 22.2.2008 though, the petitioner (i.e., the auction purchaser) and the judgment debtor were represented, there was no representation on behalf of the objectors i.e., respondent no.2 and one Pat Ram Dass Bansal who also claimed to be one of the other co-owner of the aforementioned property. At this hearing certain directions qua release of money to the extent of 1/5th share were issued, albeit-post adjustment of commission payable to the Court Auctioneer and that which has to be deposited with the treasury of Govt. of National Capital Territory of Delhi (GNTDC). It is important to note that at this hearing, since there was no presence on behalf of respondent no.2 and the other objector Shri Pat Ram Dass Bansal, their objections, in form of applications being EA No.561-62/2006 and EA No.3/2007, were dismissed for non-prosecution.

8. The matter appears to have been listed before court on 4.4.2008. At this

hearing, at the instance of petitioner (i.e., the auction purchaser) that there were no objections pending adjudication and hence no impediment to confirmation of sale vis-a-vis the remaining 4/5th portion of the aforementioned property, sale ought to be confirmed even in regard to the said 4/5th portion in its favour; the executing court passed an order. It is important, however, to note that the court while confirming the order observed as follows:

“The sale in respect of remaining 4/5th share in the property auctioned by the Court Auctioneer being premises No.460, Mundaka Village, Main Rohtak Road, New Delhi, as recorded in the report of the Court Auctioneer dated 20.12.2006, is confirmed in favour of the auction purchaser.

The Execution Petition as also the pending applications are disposed of.

List before the Joint Registrar for completion of necessary formalities with regard to confirmation of sale in respect of the 4/5th share of the auctioned property as also release of moneys to the parties on 28th April, 2008.”

9. As a result of the above, a second certificate of sale dated 22.7.2008 was issued in favour of the petitioner with respect to the purported 4/5th share in the aforementioned property.

10. It appears that the petitioner having become aware of the fact that acquisition proceedings have been taken out qua the aforementioned property, filed an application under Section 18 of the Land Acquisition Act, 1894 (in short L.A.Act) for enhancement of compensation offered pursuant to an award passed in the acquisition proceedings. Interestingly, the petitioner by way of this application claimed enhancement of compensation from Rs.1183 per sq. mtr. to Rs.40,000/- per sq. mtr. in addition to solatium, interest, damages etc. This apart, the petitioner staked a compensation with regard to the entire area contained in the aforementioned property comprising of 2 Bigas 3 Biswas equivalent to 2150 sq. yards.

11. It is at this stage that the respondent entered the fray once again, by filing a

reply to the claim petition/application filed by the petitioner. Respondent no.2 asserted that he along with four others persons, which included the judgment debtor, were the recorded owners of the property. The recorded owners being five in number and having equal share were entitled to 1/5th share of the compensation awarded in the acquisition proceedings. It was contended that as per his settlement with the co-owners, which excluded the judgment debtor, he was entitled to 950 sq. yards out of the aforementioned property ad-measuring in all to 2150 sq. yards. Assertion was also made to the effect that he had bought his 1/5th share in the aforementioned property on 10.8.1984, from one, Sarvshri Kanwar Lal who, prior to him, was the recorded the owner. The copy of the sale deed as well as the revenue record showing his name, was also filed with the said reply. Besides this, copies of the house tax receipts etc. and other documentary evidence were also filed.

12. Based on the claims and counter claims made, the LAC by way of the impugned order came to the conclusion that the petitioner was entitled to a compensation only vis-a-vis 1200 sq. yards out of the total area of 2150 sq. yards, while the balance compensation, qua 950 sq. yards, ought to be paid to respondent no.2 as other recorded owners had stated that they had no objection to the amount being released in favour of the said respondent.

Submission of Counsels

13. Aggrieved by this decision of the LAC, as noticed above, the present writ petition has been preferred before us.

14. Mr.Rajiv Saxena, who appeared for the petitioner has assailed the order of the LAC on the following grounds:

- (i) what was put to auction was the property in issue which comprised of the entire bounded area equivalent to 2150 sq. yards
- (ii) the auction proceedings as recorded on 18.2.2006, clearly indicate that, actual measurements were not taken and that the court auctioneer based on an

approximation came to a conclusion that the property in issue ad-measured approximately 1200 sq. yards. This approximation cannot be the basis of denying the petitioner the fruits of compensation awarded for the entire property acquired i.e., 2150 sq. yards

(iii) the LAC could not have ignored the two certificate of sales, by virtue of which, the petitioner was declared the absolute owner of the entire property ad-measuring 2150 sq. yards. In support of his submission reliance was placed on the judgment of the SC in *P.Udayani Devi Vs. V.V.Rajeshwara Prasad Rao and Anr. (1995) 3 SC 252*.

15. On the other hand, Mr.Sumit Bansal who appeared for respondent no.2 rebutted the arguments by largely relying on the impugned order and the observations of the court auctioneer made in his report dated 18.12.2006. Mr.Pathak, who appeared for LAC, contended like-wise, in support of the impugned order.

Reasons

16. Having heard learned counsel for the parties, in our view, the following clearly emerges on perusal of records and submission of counsels. The proceedings of the auction which took place on 18.12.2006 were recorded in the court auctioneer's spot proceedings of even date dated 18.12.2006. In the said spot proceedings, the court auctioneer fairly records that he was unable to measure the property and based on what he termed as "**outer measurement**" the property in issue ad-measured "**more or less 1200 sq. yards approximately**". The report also adverts to the fact that property was bounded by a boundary wall and was sealed by M.C.D. which, prevented ingress into the property. Based on the court auctioneer enquiry he gathered that the prevailing market rate of the property in issue would be Rs.3000 per sq. yards. Accordingly, he fixed a reserve price at Rs.36 lacs bearing in mind what he thought was the total area of the property i.e., 1200 sq. yards.

17. On the aforesaid basis he records in the said report that bids were called, when petitioner's bid at Rs. 46 lacs was declared as the highest bid qua the said property.

17.1 There is no dispute that the petitioner has paid the entire sum of the bid amount, i.e. Rs. 46 lacs.

17.2 The decree holder has also received the moneys' in satisfaction of the decree dated 29.7.2004, whereupon the balance excess amount has been released to the judgment debtor.

18 In the background of the aforesaid undisputed facts, the question which arises is : (which would determine as to whether or not we ought to sustain the impugned order) what was in contemplation of the parties at the stage when the auction was held ? The answer to this question would lie in the examination of the contemporaneous record generated on the date when the auction was conducted.

18.1 A perusal of the court auctioneer's report quite clearly shows that what was being sold in auction was a property ad-measuring "*more or less 1200 sq. yards*" at the rate of 3000 per sq. yards. The petitioner on his part had accordingly offered a bid qua a property measuring approximately 1200 sq. yards against a reserve price of Rs. 36 lacs. It was in contemplation of the court auctioneer as well as the bidders, which included the petitioner, that they were bidding for a property which measured in the region of 1200 sq. yards. Therefore, for the petitioner to turn around and now argue that, it was the property sold to him and whatever is bounded within the property must fall to his share, is a submission which does not emerge on a perusal of a documents which were contemporaneously generated. The petitioner has not assailed in any proceedings, the veracity of the court auctioneer's report.

18.2 This brings us to the other argument of the petitioner that the LAC could not have ignored behind the two certificate of sales issued in its favour as they

were conclusive of the petitioner's title to the entire property. In our view, this argument would have to be appreciated in the context of the orders passed by the executing Court pursuant to which certificates of sales were issued. There is no dispute that the first certificate of sale dated 12.2.2008, confirmed the petitioner's title to 1/5th share in the property in issue. The second certificate of sale dated 22.7.2008 was issued pursuant to the order dated 04.4.2008 passed by the executing Court. As noticed by us hereinabove, the court very carefully crafted its order by noting that sale in respect of the remaining 4/5th share in the property in issue as ***"recorded in the report of the court auctioneer dated 20.12.2006 is confirmed in favour of auction purchaser"***. Therefore, all that the court confirmed pursuant to which the second certificate of sale was issued, that the petitioner/the auction purchaser would get title to 4/5th share in the property in issue as recorded in the court auctioneer's report. It is important to note that there is a hand written spot proceedings made by the court auctioneer which is dated 18.12.2006 and a typed report which is dated 20.12.2006. Except for the date, there is no dispute that the other contents are identical in material parts. Both reports are signed. The important thing is that in both the reports there is a reference to the fact that, according to court auctioneer, the total area of the property was approximately 1200 sq. yards.

19 In view of the aforesaid, it is quite clear that in terms of two certificates of sale, the petitioner had its title confirmed only qua 1200 sq. yards and not 2150 sq. yards as was sought to be contended before us.

20 In these circumstances, in our view, the judgment of the Supreme Court in P.Udyani Devi (supra) would have no applicability as the sale certificates in issue have to be construed in the background of the orders of the court which preceded the issuance of the sale certificates in issue, in particular, the second sale certificate dated 22.7.2008.

21 The other aspect of the matter which clearly emerges from the record is

that the judgment debtor was an owner of only 1/5th share of the property in issue. Therefore, really the petitioner would have been entitled to 430 sq. yards but for the fact that the court auctioneer's report adverts to the area of the property being 1200 sq. yards. Given the fact that neither respondent no.2 nor other co-owners have staked a claim beyond 950 sq. yards, the LAC in our opinion has committed no error of law or fact, in passing the directions for apportionment of the compensation, as indicated in the impugned order.

22. In view of the fact, that the petitioner has himself invited an order against the impugned order, we have not deemed it fit to remit the matter to a remedy under the L.A. Act.

23. For the foregoing reasons, we find no infirmity in the order. Accordingly, the petition is dismissed, leaving parties to bear their own costs.

SANJAY KISHAN KAUL,J

RAJIV SHAKDHER, J

MAY , 2012
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