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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RESERVED ON: 09.05.2013

PRONOUNCED ON: 20.05.2013

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LPA 1044/2004

CM APPL.1900/2005

PHOOL SINGH & ORS.

..... Appellants

Through: Mr. Sanjay Jain, Sr. Advocate with
Mr. Sumit Rajput, Ms. Ruchi Jain and
Ms. Manisha Gupta, Advocates.

versus

UOI & ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak with
Ms. K. Kaomudi Kiran Pathak, Advocates
for Resp-2-4.

Ms. Bandana Shukla, proxy for

Ms. Ruchi Sindhwani, Advocate.

Mr. Y.R. Sharma, Advocate for Resp-6.

Mr. Sanjeev Sabharwal, Standing Counsel/North
DMC with Mr. Hem Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT

1. In the present appeal, the judgment and order of the learned Single Judge of 23.08.2004 rendered in review proceedings (R.P. No.147/2004) in a decided case, i.e., W.P. (C) 2489/2001 has been challenged.

2. Briefly, the facts are that the appellants had approached this Court

under Article 226 of the Constitution of India - by filing W.P. (C) No.2489/2001, alleging that they were owners of a large tracts of land: 332 Bighas, 7 Biswas in Khasra no.754/21 and 1 Biswa in Khasra No.801/50/1 at village Khampur Raya, New Delhi. They had alleged that the said lands had been originally notified for acquisition vide Notification dated 13.11.1959 under Section 4 of the Land Acquisition Act and later subject matter of a declaration under Section 6 of the said Act, dated 8.12.1966. It was alleged that the Award in respect of these lands were never made and that after the enactment - as well as coming into force of the amendments to the Land Acquisition Act in 1984, two year period had been mandated within which the Award could be validly made. The petitioners contended that the two year period ended on 23.09.1986 despite which the acquiring authority, i.e., the erstwhile Delhi Administration which is now succeeded to by the Govt. of NCT of Delhi did not draw the Award. Complaining that their lands had, in the meanwhile, been taken over without authority of law, the petitioners sought appropriate relief including a direction to the Govt. of NCT of Delhi to issue a Notification under Section 4 of the Act for acquisition of their land.

3. The petitioners had in the course of their submissions relied upon the judgment and order of the Division Bench of this Court in W.P. (C) 2920/1995, made on 12.12.1997 and stated that similar or identical directions ought to be given.

4. The claim in the petition was resisted. After considering the circumstances and submissions of the parties, the learned Single Judge allowed the petition by judgment dated 3.12.2001 in terms of the following directions: -

“In view of the submissions made above, I dispose of this petition with a direction to the respondents to take appropriate steps for acquisition of the land in question under the provisions of the Land Acquisition Act, 1894 by issuing a formal notification under section 4 of the Act within a period of four weeks from the date of receipt of writ order from the ;court. Learned counsel for the petitioners states that since the respondent-MCD has already utilized the land for public purpose, inquiry under section 5-A of the Act is dispensed with. Since inquiry under section 5-A has been disposed with; within a period of one year from the date of notification under section 4, the collector, Land Acquisition will make his ward under the provision of the Act and within one month thereafter the amount of compensation becoming due and payable, in accordance with the provisions of the Act, will be paid to the petitioners inclusive of solatium and interest. In case the Petitioners would feel aggrieved as regards the amount of compensation, it will be open to them to seek reference in accordance with law. Since the Land was acquired for the benefit of respondents 5 to 7 and they are in possession of the same, compensation will be paid either by respondents 2 to 4 or respondents 5 to 7, as the case may be.”

5. The Govt. of NCT of Delhi apparently being aggrieved moved the Court seeking review of the said order - dated 03.12.2001. After issuance of notices and in view of the submissions made, learned Single Judge allowed the Review Petition and held as follows: -

“The applicant respondent No.3 has stated that the judgment dated 03.12.2001 was examined for compliance of directions, but it has come to light that the directions cannot be worked out at least at this stage without involvement of other Departments. It is stated that MCD, for whose benefit, the land was acquired vide letter dated 31.12.2003 informed that its requirement was limited to the extent of 7 bighas and 10.5 biswas, which was far less than the area of land directed to be notified in terms of the judgment dated -3.12.2001. It is stated that the land informing

subject matter of the petition is now known as Baljeet Nagar, Shadipur and regulation plan of the same was prepared and approved by respondent No.3, Govt. of NCT of Delhi and the area forming under roads, schools, parks, etc. are part of the regularised colony, which were left out by the colonisers at the time of sale of plots to plot holders. These portions were mandatory to be left out for purposes of public utility services and cannot be utilized for other purposes. It is only this land, which is in possession of MCD, the area for civic amenities provided for the residents of the colony comes to only 7587 sq. Yds. And not the whole area of 332.7 bighas.

It is further stated that to the extent the land is required by the MCD, which comes to 7 bighas and 10.5 biswas, a notification has already been issued under Section 4 of the Land Acquisition Act on 17.03.2004.

The aforesaid facts show that the area has been colonized by the owners themselves, plotting has been done and plots sold. This fact was not brought to notice of the Court at the stage when the Order was passed on 03.12.2001 and an impression was given as if the complete area is taken possession of by the MCD. It is the common areas, which were required to be left for maintenance of roads, etc., are now under the management of MCD. It has to be noticed that normally the area has to be developed only in pursuance to a proper sanction for colonisation where such areas have to be left out as common areas to be maintained ultimately by the municipal authorities. The petitioners apparently did not initially do this, but subsequently when the matter was analyzed by the Govt. of NCT of Delhi, the common areas for the said purposes had been placed at the disposal of MCD. This cannot be said to be the land which had vested with MCD for its own purpose. The petitioners are trying to seek advantage of the unauthorised colonisation earlier done and seek compensation for common area which actually required to be left for colonisation.

To the extent that MCD required the area, the notification has

now already been issued on 17.03.2004. I am, thus, of the considered view that the Order dated 03.12.2001 is liable to be reviewed as the error apparent on the face of record has occurred as a consequence of the relevant facts not being brought to notice of the Court either by the petitioners or by the respondents. Directions passed in the Order dated 03.12.2001 are, thus confined to the area of 7 bighas and 10.5 biswas for which notification has already been issued on 17.03.2004.

The application is allowed in the aforesaid terms.”

6. Counsel for the appellant urges that the learned Single Judge fell into error in reviewing and recalling the directions contained in the judgment dated 3.12.2001. It was urged that the respondent, i.e., Govt. of NCT of Delhi never disputed the factual assertion that the suit lands were not the subject matter of any award. If they were, the Government would have been justified and would have been acting within its rights to resist any claim in respect of such lands. Instead, what emerged from the records was that the Government after issuance of Section 4 Notification and later the declaration under Section 6 straightaway proceeded to take possession of the suit lands and omitted to make an Award. This was plainly contrary to the Article 300A of the Constitution for which the petitioners justifiably have sought relief of return of lands as well as compensation for the unauthorised use and occupation of the property. Instead, having regard to the fact that the lands - the possession of which had been taken over and put to some public purpose - namely, for parks and other amenities, a direction to notify them and to enable the petitioners to secure appropriate compensation in accordance with law was made. In other words, it was urged that the learned Single Judge in its order dated 03.12.2001 was justified in asking the

executive government to give statutory cover to what plainly was unlawful possession; thus, learned Single Judge in reviewing those directions fell into error.

7. Learned Senior counsel for the appellants also urged that the basic premise upon which the review order - challenged in the present appeal - was made was the assumption that some of the land owners had colonized the plots unauthorisedly and that consequently acquisition of that property would have resulted in unjust enrichment. Counsel emphasised that there was no factual basis for this assumption and the learned Single Judge nearly accepted bald allegations made in that regard by the respondents.

8. From the above discussion, it is evident that the writ petitioners/appellants in this case approached the Court in 2001 - 42 years after the Notification under Section 4; 35 years after the declaration under Section 6 and 15 years after the alleged illegality, i.e., the omission to make an Award in respect of the suit land had occurred. The mainstay of the petitioners' case was the Division Bench ruling of 12.12.1997 in *Harbans Singh v. Govt. of NCT of Delhi* (CWP 2920/1995). In *Harbans Singh's* case, the area in dispute which the petitioners claimed was in illegal occupation of the government was 4.5 Biswa. In view of this and a circumstance that some of the areas were part of public amenities created and constructed by municipal authorities, the Division Bench proceeded, by its judgment, to issue the following directions: -

“In the aforementioned background, we have heard learned counsel for the parties. As it is not in dispute that the petitioners have been deprived of their property otherwise than in due course, in order to regularise the possession of respondents, when amicable settlement has failed, the only

recourse left open is to direct the respondents to resort to the procedure established in law to acquire the property and pay due compensation to the petitioners. On the basis of the material available on record, it will not be possible to fix any date of the petitioners dispossession with respect to each portion of the property. The same will have to be ascertained on leading evidence before the Collector Land Acquisition. The National Capital Territory of Delhi; Collector Land acquisition and Municipal Corporation of Delhi besides others are party of this petition. Thus there cannot be any technical hitch in issuing appropriate direction for acquiring of the property and for paying the amount of compensation. Article 300-A of the Constitution obliges upon the respondent and enables the petitioner for compensation.

Accordingly the respondents are directed to take appropriate steps for acquisition of the entire property under the provisions of Land Acquisition Act 1894 by issuing a formal notification under section 4 of the Act within a period of 4 weeks from the date of receipt of writ order from this court. Learned counsel for the petitioners on instructions for the petitioners states that since the respondent MCD has already utilized the land for public purpose, inquire under Section 5A of the Act is dispensed with. Since inquiry under section 5A has been dispensed with; within a period of one year from the date of notification under Section 4, the collection, Land Acquisition will make this award under the provisions of the Act and within one month thereafter the amount of compensation becoming due and payable, in accordance with the provisions of the Act, will be paid to the petitioners inclusive of solatium and interest.

In case the petitioners would feel aggrieved as regards the amount of compensation, it will be open for them to seek reference in accordance with law.”

9. As is evident from a plain reading of the relevant extract of the main judgment and order in the appellant's petition dated 3.12.2001, the learned

Single Judge directed that the acquisition proceeding be initiated largely based upon the appreciation of the previous Division Bench ruling. What was, however, prominently overlooked was the circumstance that the property in question in Harbans Singh's case was an extremely small area; in the present instance, the appellants are 249 in number and the area of land is 332 Bighas. Keeping in mind these facts, the Government approached the Court seeking review. The learned Single Judge who heard the Review Petition was persuaded to recall the substantial directions in the earlier decision of 3.12.2001 and at the same time retain it to the extent that the Government of NCT of Delhi and the Municipal Corporation had acted upon it and proceeded to acquire the area of 7 Bigha 105 Biswa through a Notification under Section 4 of the Land Acquisition Act, dated 17.03.2004.

10. This Court is of the opinion that there is no infirmity with the impugned judgment and order. The directions issued earlier on 3.12.2001 by the learned Single Judge was based entirely upon a Division Bench ruling in *Harbans Singh's* case. What was overlooked, however, was that the present appellants approached the Court complaining of illegality in the acquisition at least 15 years after the event. Even if it is assumed that the last date of publication of the Award was 24.09.1986, it is not as if the petitioners/appellants were unaware about the alleged illegality or omission. They chose to allow matters to rest as they stood and permit the occupation and use of the property by the government which appears to have taken it over more than 3½ decades ago, i.e., sometime in mid 1960s. The inspiration for their approaching the Court was the judgment in *Harbans Singh's* case. However, the long and inordinate delay to this Court's mind precluded the exercise of jurisdiction under Article 226 of the Constitution

of India. This Court is not unmindful of the fact that the possession of the suit lands which had belonged to the petitioners/appellants earlier continued to remain with the Government uninterruptedly and without challenge. Even after 1986 such continued possession went unchallenged for more than 12 years which is the period prescribed for perfection of title under Article 65 of the Limitation Act. Having regard to these circumstances, this Court should not have in the first instance issued a direction on 3.12.2001.

11. More fundamentally, the Court is of the opinion that the directions made on 3.12.2001 were untenable. The exercise of discretion of whether to acquire land and if so to what extent is exclusively that of the appropriate government under the Land Acquisition Act. Once this power is conceded through an executive agency, unless a corresponding enforceable duty is shown, the Courts would desist from entering into the policy realm and dictating the exercise of discretion in a particular manner. In the present case, the order dated 3.12.2001 directed the Court to exercise discretion in one specified manner and proceed to acquire property. This clearly could not have been done. There is authority in this statement in the form of a recent decision - *Jayamma & Ors. v. The Deputy Commissioner, Hassan Dist., Hassan and Ors.* (Civil Appeal Nos.4345-4429/2013), decided on 6.5.2013 by the Supreme Court. The Supreme Court held pertinently that: -

“Whether to acquire a particular property or not is for the Government to decide. It is not within the jurisdiction of the Court to compel the Government to acquire any property, otherwise than as per the Land Acquisition Act. No doubt, the High Court exercises judicial review of administrative action or inaction. But having regard to the various facts and circumstances or factors, it is for the Government to consider at the permissible stage as to whether a particular property is to be acquired or whether an Award is to be

passed pursuant to proceedings already initiated under Section 4(1) of the Act. The Act is a complete code as far as such decisions are concerned and Government is well within their jurisdiction to act as per the scheme provided under the Act. Merely because proceedings under Section 4 of the Land Acquisition Act has been initiated, it is not required under law to acquire the land. It is not within the jurisdiction of the Court to compel the Government to pass an Award pursuant to Notification issued under Section 4(1) of the Act even when it is followed by the declaration.”

From the forgoing discussion, it is evident that the order dated 3.12.2001 allowing the writ petition in terms of the wide directions could not have been legally sustained. It was consequently reviewed by the impugned order. This Court finds no infirmity with the impugned order of review. As a result, LPA 1044/2004 and all pending applications are without merit and are accordingly dismissed. No costs.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MAY 20, 2013

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