

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

+ RSA No. 25/2002 & CM No. 79/2002 (Stay)

% *22nd January, 2014*

HOSHIAR SINGH & ORS. Appellants
Through: Ms. Maldeep Sidhu, Advocate.

VERSUS

DDA Respondent
Through: Mr. Pawan Mathur, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This regular second appeal is filed by the appellants against the impugned judgment of the first appellate court dated 31.1.2002. This regular second appeal is pending at the admission stage since the year 2002 i.e for over 12 years. The appellate court by its impugned judgment dismissed the appeal filed by the appellants herein against the judgment of the trial court dated 8.5.2001, and by which judgment, the trial court had dismissed the suit for injunction of the appellants-plaintiffs with respect to the suit land which was acquired land of the government.

2. Disputes in the present case pertain to 4 bighas and 4 biswas i.e about 4200 sq. yds of land situated in Khasra No.405/98 in village Masoodpur, New Delhi. Admittedly, this land was acquired by Award No.90/80-81 (Ex.DW1/1). The case of the appellants-plaintiffs was that they had/have built houses upon the suit land and there are in fact Municipal Nos.C-1 to C-10 on the structures in the suit property, and when the same is taken with the fact that government did not take physical possession, the government did not become the owner in view of Section 16 of the Land Acquisition Act, 1894, and thus appellants-plaintiffs are entitled to the relief of injunction to restrain the respondent/defendant/Delhi Development Authority from in any manner interfering in their possession. Documents in support of their case have been filed on record and proved by the appellants, being the khasra girdawaris of the year 1981 to 1993 as Ex.PW1/1 to Ex.PW1/13.

3. Learned counsel for the appellants has argued that substantial question of law accordingly arises because government did not become the owner of the lands by having taken physical possession and that possession was not taken on account of structures existing on the same, and consequently, the courts below have erred in dismissing the suit. It is also argued that once the appellants-plaintiffs have constructed on the suit

property, and which is thus a built-up area, consequently, the threat of the defendant-Delhi Development Authority (DDA) to take possession including by demolition is illegal.

4. In my opinion, even assuming if I give benefit of all the documents proved on behalf of the appellants-plaintiffs in the trial court, and which show that structures exist, and also that municipal numbers have been given to the land and the appellants-plaintiffs claimed to have property tax, yet however, that cannot mean that the government after completion of acquisition proceedings cannot take physical possession merely because the area is built up. There is no law which is laid down under Section 16 of the Land Acquisition Act that merely because superstructures have come up by the acquired land, possession of acquired land cannot be taken. Once acquisition proceedings are completed, the acquiring authority since it has paid/deposited the necessary compensation, can always take physical possession of the land, even by demolishing the structures which exist on the land. In the present case, in my opinion, though I am assuming that there were structures even prior to existence of Section 4 which deals with publication of preliminary notification, really the only documents filed on behalf of the appellants are from the year 1981 onwards and the Award in this case is Award No. 90/80-81. Also, there is no bar in law for the

government to acquire land even if there are built-up structures upon the same. If at all disputes are there as to the value of the structures, then the same is the subject matter of the extent of compensation in the land acquisition proceedings. I hasten to observe that I am mentioning these aspects of value/compensation of the structure only as a matter of abundant caution inasmuch as there is no finding in the Award of the appellants-plaintiffs (or the original owners of the suit land) being entitled to compensation on account of structures existing in the same.

5. At this stage I would seek to refer to the following apposite observations of the appellate court, and which in my opinion, are sufficient for dismissal of this second appeal.

“In reply to the above contention, ld. counsel for the respondent has contended that immediately after issuance of notice under Section 4 of Land Acquisition Act, it is contemplated that entire land falling under the notification has been intended to be acquired by the government. It is because the subsequent procedure has to take sometime and thereafter notices under section 6 of the Land Acquisition Act is issued followed by other provisions of the Land Acquisition Act for finalization of the Acquisition Proceedings. The proceedings culminate Collector and the award has been announced to the persons whose land have been acquired. In this case, the notification dated: 23.1.65 was issued followed by notice under section 6 of L.A.Act vide notification no.F.4(98)/64-L&H dt: 26.12.68. The entire land falling in village Masoodpur with a total area of 4826 bighas and 4 biswas of land was acquired by the above notifications Ex.DW1/1. After the issuance of the aforesaid notifications, the award was announced bearing no.90/80-81. In view of the above notification, the government had already announced its intention to take over the land of village Masoodpur in

the year 1965. The appellants have allegedly claimed the possession over the land in question sometimes in the year 1981 and continued to possess the same thereafter. It becomes the duty of the individual that if one wants to take ownership or possession over the land, he must be vigilant about the notification of the government. It is pertinent to mention that the gazette notification of Section 4 and 6 of L.A.Act provides presumption to all individuals that they have notice of the acquisition of the land. If anyone deals with such land, runs the risk of dispossession. In this way, learned Civil Judge is justified that the possession was taken over by the appellants after the aforesaid notification which do not entitle them for the ownership in possession of the land in question. The proving of all the documents i.e. khasra girdawari and khatauni for the year w.e.f 1981 to 1993 Ex.PW1/1 to Ex.PW1/13 are of no consequence. These documents depict the possession of the applicants over the land in question but that possession has no legal force in the presence of the proceedings conducted by the Land Acquisition Collector for acquisition of the land. In this respect reliance can be placed upon the reported case of our own High Court in Rajinder Kakkar and others Vs. DDA and others [1994 (1) AD (Delhi) 4321 and the relevant portion is reproduced as below:

“Time has now come where the society and the law abiding citizens are being held to ransom by persons who have no respect for law. The wheels of justice grind slowly and the violators of law are seeking to take advantage of law delay. That is why they insist on the letter of the law being complied with by the respondents while, at the same time, showing their complete contempt for the laws themselves. Should there not be a change in the judicial approach or thinking when dealing with such problems which have increased manifold in recent years viz. large scale encroachment on public land and unauthorised construction thereon most of which could not have taken place without such encroachers getting blessings or tacit approval from the powers that be including the municipal or the local employees. Should the courts give protection to violators of the law? The answer in our opinion must be in the negative. Time has now come when the courts have to be satisfied before they interfere with the action taken on proposed to be taken by the governmental authorities qua removal of encroachment of sealing or demolition unauthorized construction specially

when such construction, like the present is commercial in nature.”

In view of the above, it is evident that the Land Acquisition Collector had not taken the possession of the land during the kabja karvahi because of the practical difficulty being faced by the acquisition authorities. Thus, at the time of acquisition proceedings the possession has not been taken over by the authorities, it does not tantamount to prove the ownership and possession of the person occupying the acquired land. It does not give licence to the occupant to hold the land and put the authorities impracticable and paralyzing the development activity for which the land was acquired.

It has also been contented by Id. counsel for the appellant that Id. Civil Judge has held that the provisions of Delhi Land Reforms Act 1954 are not applicable in the instant case because of the reasons that the land in question has been acquired by the government. In this respect, it has been contended that the appellants are boomidars and in possession of the same and the possession of the land in question was not taken over by the government and it has not been acquired till date and this Section does not apply to the facts of the case of the respondent. From perusal of the sub-section(2) of Section (1) of Delhi Reforms Act 1954 it is evident that Delhi Land Reforms Act does not apply to the land which has been acquired under the Land Acquisition Act or under any other provisions of the law. The same is applicable to the instant case but the Id. counsel for the appellant has contended that since no possession under Section 16 of the Land Acquisition Act was taken by the government, hence, unless possession is not taken over by the government, the land in question is not acquired and the owners of the same remain the owners of the same as they were. To support this contention, Id. counsel is relied upon Air 1960 Patna 380 which states that in the proceedings under the Land Acquisition Act, the title of the land does not pass to the State as soon as award under section 11 of L.A.Act is made and filed under Section 12, but it is deferred till possession is taken under Section 16 of Land Acquisition Act. Learned counsel has further contended that the land has not been acquired at all by the government, though the award may be announced but it has not been acquired and the property in question does not pass on to the government as soon as the award was announced and the appellants remain boomidars of the same as they were earlier. In this respect, he is further relied upon 43 DLT 314 of our own High Court. It has also been

submitted that there is no notification under section 22 of L.A.Act, placing the land in dispute at the disposal of the DDA. The question of interfering with the DDA does not arise because the DDA has no right whatsoever in the suit land as it has not been put, at all, for disposal of the DDA by government by issuing notification under section 22 of L.A Act. In this respect, it is pertinent to mention that the government has acquired the entire land of village Masoodpur under Section 4 followed by Section 6 of L.A.Act. The appellants came into possession over the land in question sometimes in the year 1981 whereas notifications are much prior to taking of the possession by the appellants. This shows that the possession of the appellant is in the form of an encroacher and an encroacher has no right, title or interest over the property. However, during the continuance of possession over the property he may have obtained the record from the revenue authorities showing his possession but that possession will not entitle him to claim ownership in possession of the land in question. On the basis of award announced of this land, it is evident that the claimants have already been compensated with the award and the appellants appear to be subsequent encroachers over the land in question. As such, the authority cited by Id. counsel for the appellants is not applicable in the instant cases. The case law cited as Premji Ratansey Shah Vs. UOI And Others (JD 1994(6) Supreme Court 5851 is applicable in the instant case and the relevant portion is reproduced as below:

“Section 41(j) –injunction as a personal right under section 41(j)-injunction would not be issued against true owner-injunction cannot be issued in favour of a trespasser or a person who gave unlawful possession as against the owner.

Since the appellant has been an encroacher over the land, there is no question of payment of compensation to the acquired land under the provisions of Land Acquisition Act. The persons holding possession over the land unauthorisedly have no right, title or interest over the land even if they have created documents like khasra girdawari and khatauni for the subsequent period. It has been rightly decided by Id. Civil Judge that the appellants were unable to produce the revenue record showing the title for the land in question as he was not the owner of the land.

In view of the observations, as made above, the present appeal fails. The judgment of Ld. Civil Judge is maintained.

Trial court record be sent back with a copy of this judgment.
Decree sheet be prepared. File be consigned to record room.”

(emphasis added)

6. Learned counsel for the appellants wanted to cite certain judgments, however, I do not think there is any need of citing judgments because I am accepting the entire case of the appellants-plaintiffs as urged before the courts below of structures existing and the appellants-plaintiffs being in possession, but the real issue is not of any existing structures but the real issue is of the entitlement of the government to take possession in terms of Section 16 once the entire acquisition proceedings are completed. There is no entitlement in the appellants-plaintiffs and nor can any court stop taking of physical possession under Section 16 of the Land Acquisition Act by the competent authority after acquisition proceedings have achieved finality by passing of the Award and payment of compensation.

7. I may note that a Division Bench of this Court in the case of *Bahadur Singh & Ors. Vs. Union of India & Ors. 122(2005) DLT 586 (DB)* has held that in fact in such a situation where the land is already acquired, the suit itself is not maintainable because land acquisition proceedings are completed with respect to the acquisition. I am making reference to this judgment because the suit reliefs if allowed would really be in the nature of challenging the finality of acquisition proceedings and

therefore, the observations made by the Division Bench are relevant. Para

13 of the judgment in *Bahadur Singh's case (supra)* reads as under:-

“13. Having held thus, we may now decide the other issue which arises for our consideration regarding the maintainability of the suit in the civil court. It is no longer rest integra that the Land Acquisition Act is a self contained Code and is a complete Code in itself. The acquisition proceeding comprises of various steps and on completion of the steps, finality and conclusiveness is provided to said steps by operation of Section 6(3) of the Act. The declaration is deemed to be a conclusive proof of acquisition of the land in question. Similarly by virtue of Section 12 of the Act, the award is final and conclusive subject to the exception as to the measurement of the land, true amount of compensation and the person entitled to the compensation. It is also statutorily provided that after communication of the award, the Government is entitled to take possession of the land covered under the award. Upon taking over the possession of the land under Section 16, the same vests in the Government free from encumbrances and, Therefore, the acquisition proceedings cannot be questioned on any ground whatsoever. Consequently, after the acquisition proceedings have been upheld by this Court as also by the Apex Court, the only other subject that was left out was to take possession of the land under Section 16 of the Act. It is not disputed that when the respondents took steps to take possession of the lands, the present suit was filed and an injunction was obtained. It is also clearly established from the nature of the challenge made in the present suit that the appellants are seeking for a declaration that their lands are not covered by notification issued under Section 4 and declaration under Section 6 of the Act and, thus, free from acquisition. It is also prayed that consequently the award is also without jurisdiction and null and void. Thus, the appellants are in fact challenging the act of the Government whereby their lands have been included in the declaration and the ward which is an act under the Act which has reached finality after dismissal of the writ petition and the SLP. A detailed procedure having been laid down for challenging the various actions contained under the Act, remedy is to be sought for as provided for in the said Act or under the writ Court which exercises such jurisdiction. Such a remedy cannot be looked into and sought for in the civil court merely because the appellants in the suit cleverly did not seek for a relief about quashing of the declaration and the award but what is sought for in the suit clearly amounts to seeking for

quashing of the declaration and the award in respect of the lands of the appellants. In our considered opinion, no relief could also be granted to the appellants in the suit without quashing the declaration and the award which already stands upheld even by the Supreme Court in the writ proceedings filed by the appellants. Therefore, it was appropriately held by the learned trial court that the foresaid civil suit is not maintainable. The findings and conclusions that we have arrived at also find support from the decisions of the Supreme Court in *S.P. Subramanya Shetty and Ors. v. Karnataka State Road Transport Corporation and Ors.* : [1997]3SCR370 , *Laxmi Chand and Ors v. Gram Panchayat, Kararia and Ors.* : AIR1996SC523 , *State of Bihar v. Dhirendra Kumar* : [1995]3SCR857 and *Narayan Prasad Agrawal v. State of M.P.* MANU/SC/0359/2003 : AIR2003SC4375 .”

8. It has been similarly held by a Single Judge of this Court in the judgment reported as *Ashok Nagar Welfare Association (R) Vs. Union of India* 81 (1999) DLT 82 that Courts would not stay taking over of possession once acquisition proceedings are complete. Paras 5 of this judgment reads as under:-

“5. The learned counsel for Delhi Development Authority has, however, denied the averments as made by the petitioner, referred to above, and has stated that the land on which the alleged colony of the petitioner is based has been acquired and the acquisition having been upheld by this Court in CWP No.1507/84 the present petition is liable to be dismissed. He has argued that the alleged policy of the Government for regularisation may be applicable to valid title-holders and for the purpose of granting civic amenities. Paragraphs 4,5 and 6 of the counter affidavit filed by Delhi Development Authority read as follows:

"4. That in another civil Writ Petition No. 1507/84 the very same society had challenged the notification dated 17th November, 1980 under Section 4 of the Land acquisition Act and notification dated 29th September 1981 issued by Delhi Administration for the purpose of

acquiring a large tract of land in village Chilla Saroda Bangar for the plan development of Delhi. The said writ petition was contested by the respondent on the ground that the possession of the acquired land was handed over to the Delhi Development Authority on 1st October, 1982 and thereafter the land in question was placed at the disposal of the respondent Authority under Section 22 of the Delhi Development Act vide notification dated 14th October, 1982.

5. That the acquisition in respect of the land situated in Khasra Nos. 391/263, 392/264, 393/264 and 402/268 has become final. The possession of the land having been taken over the title of the land in question vests in the Government free from all encumbrances and there is no provision under the scheme of the Act to divest the same which has validly vested with the Government under the Land Acquisition Act. The Division Bench of this court heard arguments in C.W. No. 1507/1984 and the same was dismissed vide order dated 21st May, 1998.

6. That further, some portion of the land acquired has been allotted to Saraswati Kunj Cooperative Group Housing Society for a valuable consideration and the said Cooperative Group Housing Society has constructed their flats on the demised land."

The plea that the built up areas cannot be acquired was repelled by the Division Bench of this Court in the judgment reported as M/s. Prem Chand Ramesh Chand Vs. Delhi Development Authority & another 66 (1997) Delhi Law Times 110. The operative portion in paragraphs 6 and 7 read as follows:

"6. The contention that there is any policy to regularise unauthorised colonies or there is a policy decision not to acquire built up area, are concluded against the petitioner by a Division Bench decision of this Court in the case of Atter Singh Vs. D.D.A. (CW No. 3110 of 1991) decided on 10th August, 1992. In Atter Singh's case also it was alleged that the petitioner had a godown built up on an area situate in village Haiderpur on private land and no action can be taken by the

respondents against the petitioner. In that case too, the Bench referred in the judgment to the same Award No. 50/80-81 made on 18th July, 1980. The contention that there was a policy of Government to regularise the unauthorised colonies and also not to acquire built up area was rejected and it was observed that:

"It was further contended that unauthorised colonies on Government land are sought to be regularised. It is possible that a political decision to this effect may be taken with regard to some of the colonies but as far as this land is concerned there have been valid proceedings for acquisition under the provisions of the Land Acquisition Act. If there was any built up area on the date when Section 4 Notification was issued, the claimants would be entitled to receive compensation in accordance with law. As far as the petitioner is concerned, we do not find that the petitioner is entitled to any compensation and in fact it is one Udai Singh who had already received the compensation. Be that as it may merely because some of the colonies are going to be regularised cannot be of any assistance to the petitioner specially when, in the writ petition, there is no challenge to the acquisition proceedings. The proposal of excluding the land from the award which was therein 1968 has apparently been given a go by and this has resulted in, first Notification under Section 6 being issued on 2nd January, 1969, followed by the award in 1980."

7. The contention in respect of the policy of leaving out from the acquisition built up area has also been repelled in another Division Bench decision of this Court in Shri Bhagwan and another Vs. Union of India & ors., 1991 (2) Delhi Lawyer 59 (DB). This decision has been affirmed by a Full Bench of this Court in Roshanara Begum Vs. Union of India, 1996 (1) AD (Delhi) 6. We may also notice that the appeal filed against Full Bench has been dismissed by the Supreme Court (see: Murari and other Vs. Union of India and others,)."

(underlining added)

9. In view of the above, no substantial question of law arises, and the appeal is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 22, 2014
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VALMIKI J. MEHTA, J.