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

% 7th February, 2014

+ LA.APP. 632/2011 & CM No. 17689/2013 (for stay)

SURAJ BHAN THR GPA HOLDER & ORS. Appellants
Through Mr. Naresh Kaushik, Mr. Vardhman
Kaushik, Advocates

versus

UNION OF INDIA & ANR. Respondents
Through Mr. Anuj Aggarwal, Advocate
respondent No. 1.
Mr. Ankit Jain, Advocate for respondent No. 2.
Mr. S.K. Pathak, Ms. K. Kiran Pathak, for
respondent/LAC.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This appeal is filed under Section 54 of the Land Acquisition Act, 1894 impugning the judgment of the court below dated 6.6.2011 by which the proceedings under Sections 30 and 31 of the Land Acquisition Act, 1894 were decided in favour of the interested person, respondent no. 2 herein, and who was the respondent no. 1 (IP No.1) in the court below. By the impugned judgment, the claim of appellants-respondent nos. 2 to 9 before the court below, with respect to the compensation for the acquired land has

been dismissed.

2. The case as set up by the appellants through their power of attorney holder was that the subject land which has been acquired was purchased out of compensation received with respect to another acquired land in which appellants had a right, and therefore, appellants are entitled to receive compensation with respect to the subject/now acquired land. With respect to earlier/other piece of land situated in village Bawana, (subject land being situated in village Rajapur Kalan, Delhi), the appellants claimed that they were owners of that land because the Will which was relied upon by the respondent no. 2 herein of late Smt. Ratni Devi was a forged and fabricated document.

3. The court below has given three important conclusions to allow the claim petition by granting compensation to the respondent no. 2 herein, and which are :-

(i) The respondent no. 2 herein has been consistently shown to be the owner of the subject land in the land revenue records and was also shown as the owner of the earlier land situated in Bawana.

(ii) The mutation proceedings challenging the ownership of respondent no.2 initiated by the appellants herein were dismissed way back in the year

1998, and which proceedings achieved finality till the Supreme Court.

(iii) The appellants in their cross-examination have sought to first deny the knowledge of these earlier proceedings, however, one of the appellants in his cross-examination did admit that proceedings for cancellation of the mutation effected in favour of the respondent no. 2 herein were filed but they stood dismissed.

(iv) Appellants were suing through a power of attorney holder, and this power of attorney document entitled the power of attorney holder of the appellants to the compensation of the land at Bawana only, and not to the compensation of the subject/now acquired land situated in village Rajapur Kalan which was the subject matter of the proceedings in the court below.

(v) If appellants have any right, at best their right was to file a suit for recovery of moneys for the compensation of the earlier land situated at Bawana and compensation of which is stated to have been illegally received by the respondent no. 2 herein, but, the present claim petition cannot be filed with respect to the subject land which is alleged to have been purchased from compensation as regards the acquisition of the earlier Bawana land in which appellants claimed a right. Even the limitation for filing of the suit for recovery of the moneys of the Bawana land had expired.

(vi) The claim which is set up on behalf of the appellants by challenging the Will of late Smt. Ratni Devi was set up in an earlier suit but that suit was dismissed by the order dated 22.2.2003, and which order has become final.

4. The relevant observations of the court below on these aspects are contained in paras 13,14 and 15 of the impugned judgment and which paras read as under :

“13. Even otherwise, if I presume Sh. Kuldeep Singh was duly appointed attorney of IP no. 2 to 9 I do not find that IP no. 2 to 9 are entitle to any compensation. It is admitted fact that IP no. 1 Raj Singh is the recorded bhumidar of the land and was in possession of the land. IP no. 2 to 9 had only claimed compensation on the ground that IP no. 1 had forged the Will of their mother Smt. Ratni Devi and on the basis of the said forged Will he has received the compensation of some other land situated in Village Bawana belonging to late Ratni Devi and out of said compensation money IP no. 1 purchased the land in question. To prove the same Ld. Counsel for IP no. 2 to 9 relied upon affidavit Ex. IP2W1/2 filed by IP No. 1 in writ petition no. 4560/1998. In the said affidavit IP no. 1 had given the details of investment made by him from the compensation amount of Rs. 4559136/-, it is mentioned that he invested Rs. 74000/- for purchase of land from Sh. Singh Ram and Rs. 5400/- for purchase of land from Smt. Premwati. Since IP no. 1 had not denied that he has not furnished the said affidavit in High Court. Hence it is proved that land in question which was purchased vide sale deed Ex. Ex. IP2W1/C-2 and IP2W1/C-3 from Rs. 4559136/-, the compensation received by the IP no. 1 by the LAC of the land of Village Bawana, as alleged by the IP no. 2 to 9. But in my view it does not make IP no. 2 to 9 entitle to receive the compensation of land in question, as the mandate of Section 31 LA Act is limited and only persons who have interest in land in question are entitle to receive the

compensation. Section 3 (b) of the Land Acquisition Act, 1894 define who are interested parties:

3(b) “The expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act: and a person shall be deemed to be interested in land if he is interested in an easement affecting the land”

Thus, on perusal of the above section it is apparent that only a person who can claim and interest in compensation on account of acquisition of land is a person interested or a person who has any easement right in the acquired land. Now if we put the said test in the present case definitely IP no. 2 to 9 are not interested parties as they are neither bhumidar of the land in question nor they are Asami. Further it is not the claim of IP no. 2 to 9 that they have any easement right in the land in question.

The test is whether the IP no. 2 to 9 have any right in the land in question if it is not acquired by the Government. The answer is, ‘No’, as IP no. 2 to 9 are neither the bhumidar of the land nor Asami of the land. Even if, the land in question is purchased out of money received from the compensation of the Bawana land which belong to their mother. IP no. 2 to 9 cannot claim any right in the land, the only remedy available to them was that they could file an independent civil suit for recovery of the compensation amount which IP no. 1 received on the basis of alleged forged Will and in that suit at the best IP no. 2 to 9 can get restrain order from selling/transferring the land in question or can get attach the same compensation of the land in question in case of acquisition. It would be just like the attachment of the amount in a decree for the satisfaction of another decree. But it admitted fact that IP no. 2 to 9 did not file any case for recovery of compensation amount of Bawana and period for filing suit for recovery has also expired. They

had only filed the objection/claim claiming the compensation the land in question, which is not permissible as they are not the interested parties with respect to the land in question. Hence, they cannot directly claim any compensation from land in question.

14. Even otherwise onus to prove that IP no. 1 has forged the Will of Smt. Ratni Devi was on the IP no. 2 to 9. In order to discharge the burden IP no. 2 to 9 had only examined one witness i.e. IP2W1 Kuldeep Singh who claimed to be attorney of IP no. 2 to 9. This witness had led his examination in chief by way of affidavit in which he has deposed that IP no. 1 has forged Will of Ratni Devi dated 14.04.89 and on the basis of said Will he has got the mutation of the land of Bawana Village in his name vide mutation case no. 439NTN/96-97 and received the compensation of Rs. 4559136/- from LAC. This witness has further deposed that a case u/s 420/467/468/471 read with Section 120B IPC was registered in PS Bawana vide FIR No. 338/2002 which is pending in the Court of Sh. S.S. Malhotra, MM, Delhi and proved the certified copy of the charge sheet Ex. IP2W1/3. Further this witness has deposed that IP no. 2 to 9 had filed the civil suit no. 4560/1998 in the High Court wherein IP no. 1 has given the affidavit that he has purchased the land in question out of the compensation money received from the land belonging to Smt. Ratni Devi. In the cross examination, witness has admitted that in the GPA nothing is mentioned about the land of village Rajapur Kalan. He has also admitted that appeal filed by IP no. 2 to 9 against the mutation order by which land of Smt. Ratni Devi was mutated in the name of IP no. 1 on the basis of Will was dismissed by the Collector and second appeal by the Financial Commissioner and the writ petition filed by the IP no. 2 to 9 against the order of Financial Commissioner was dismissed by the High Court, however this witness has denied the suggestion that SLP filed against the said order was also dismissed vide order dated 16.04.2007 in SLP case no. 7688-7689, copy of which Ex. IP2W1/C-1. He has also admitted that IP no. 2 to 9 had challenged the Will of Ratni Devi wherey she bequeathed

Village Bawana land in favour of IP no. 1 and suit was dismissed vide order dated 22.02.2003. Witness has also admitted that – IP no. 1 had purchased the land in question and mutation was also sanctioned in his name and IP no. 2 to 9 have not challenged sale deed and mutation of the acquired land.

15. On appreciation of evidence led by the IP no. 2 to 9 it is evident that they had neither filed the alleged forged Will on record which has forged by the IP no. 1 nor had examined any witness to prove that the said Will was not signed by Smt. Ratni Devi. Merely registration of FIR of forgery against IP no. 1 and framing of charge in case FIR no. 338/2002 u/s 420/467/468/471 read with Section 120-B IPC, does not prove that IP no. 1 has forged the Will of late Ratni Devi. Only civil court has jurisdiction to declare a Will as null & void. It is admitted by IP2W1 Sh. Kuldeep Singh in the cross examination that they had challenged the Will of late Ratni Devi made in favour of IP no. 1 in a civil suit and the said suit was dismissed vide order dated 22.02.03. It is also admitted by IP2W1 that IP no. 2 to 9 had filed the civil writ petition no. 4560/1998 for claiming the compensation but said writ petition was also dismissed by the High Court vide order dated 25.04.03 as admitted by the IP2W1 in his cross examination and even IP2W1 also admitted the SLP was also dismissed. The order of mutation of the Bawana land in favour of IP no. 1 was also challenged by the IP no. 1 which was made by the revenue officials on the basis of Will of late Ratni Devi upto High Court and his appeal was dismissed. Hence, it is proved that IP no. 2 to 9 had failed to get any favourable order from any court that the Will executed by late Ratni Devi in favour of IP no. 1 was forged. Therefore, as stated above onus was on the IP no. 2 to 9 that Will was forged. They have miserably failed to prove that Will is forged. Therefore it is not proved that IP no. 1 had received the compensation of Bawana land on the basis of payment forged Will of late Ratni Devi. Hence, IP no. 2 to 9 had failed to prove that they were entitled to receive compensation even Bawana land. (underlining added)

5. In fact during the course of hearing I put to the counsel for the appellants that suppose out of the compensation of the land which has been acquired in village Bawana, the respondent no. 2 would have used the moneys to trade in the Stock Market and would have suffered heavy losses, then, would the appellants be liable to share the losses? Obviously not is the answer. Similarly, if compensation amount of the land at village Bawana in which the appellants claim a right would have been used for illegal purpose, then, would the appellants also have been arrested with the respondent no.2? Once again, the answer is obviously not. These prima facie absurd examples are given to show that really the claim of the appellants, if it validly existed, was to file a suit for recovery of moneys of Bawana land and not contest the present proceedings under Sections 30 and 31 of the Land Acquisition Act, 1894 which was with respect to the compensation of a wholly different land situated at village Rajapur Kalan.

6. In view of the above, there is no merit in the appeal, and the same is therefore, dismissed, leaving the parties to bear their own costs.

FEBRUARY 07, 2014
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VALMIKI J. MEHTA, J