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

% *Judgment delivered on: 4th August, 2014*

+ W.P.(C) 7649/2011

ASHOK KUMAR

..... Petitioner

Represented by: Mr. Sumit Bansal and Ms. Jagriti Ahuja, Advs.

Versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Represented by: Mr. Sanjay Kumar Pathak, Adv.
for R1 and R3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present Writ Petition, the petitioner is seeking direction to declare the action of the respondents, being in violation of Article 300-A of the Constitution of India by taking away the property of the petitioner forming part of Khasra No. 561/421, ad-measuring 1 Bigha & 16 Biswas, situated in the area of Village-Saleempur Majra, Madipur, Delhi. Further seeking a direction against the respondents to restore back / hand over the possession of the aforementioned land to the petitioner.

2. Mr.Sumit Bansal, Ld. Counsel appearing on behalf of the petitioner submits that identification of the land of the petitioner has been established by the Demarcation Reports carried out in the year 1991, 1993 and 1994 and a mere self-serving survey report carried out by respondent nos. 2 and 5

cannot decide about the identity of the land which stood concluded by the demarcation carried out by the Office of the same respondent and the Deputy Commissioner concerned. Moreover, the land of the petitioner was sought to be acquired and a Notification under Section 4 read with Section 17 (1) and 17(4) of the Land Acquisition Act was sought to be issued. Accordingly, the possession of the land of the petitioner was also taken over by the respondents at the site.

3. The action for demolition of structure standing upon the land was also taken by the respondents. After taking over the possession, the portion of the land was utilized for the purpose of the construction of the missing link road no. 43 and remaining area of about 1100 Sq. Yds. is still available.

4. The respondents have sought to usurp the property of the petitioner in complete negation of the principle of law. Thereafter on 24.06.2005 the land of the petitioner was de-notified from acquisition by the respondents. Accordingly, the respondents were required to hand over / restore back the possession the land taken over by them during the acquisition proceedings.

5. Ld. Counsel further submitted that on 13.02.1991, the petitioner moved an application to the SDM requesting to inspect and give their status report in respect of the property. Accordingly, for identification of the land a demarcation was carried out by the Local Commissioner vide order of the SDM dated 15.07.1991. On 23.08.1991, demarcation was carried out and as per the said report, the property of the petitioner falls in Khasra No. 561/421 ad-measuring 1 Bigha, 16 Biswa in Village-Saleempur Majra, Madipur, Delhi. Thereafter on 30.08.1991, the property was purchased and a Sale

Deed was executed in favour of the petitioner. Accordingly, the property was got mutated in the Revenue Records.

6. Ld. Counsel further submits that on 27.04.1992, the Ld. SDM passed an order that the property in question to be demarcated by the Tehsildar, Nazafgarh. Accordingly, the Tehsildar submitted the demarcation report to SDM on 14.05.1992. Thereafter on 18.01.1993, the SDM directed the parties to act as per the report dated 14.05.1992 of Tehsildar, Nazafgarh. Again on 14.03.1994, SDM ordered for demarcation of the property. The report on the demarcation was submitted on 12.04.1994 identifying the property as Khasra No. 561/421. Accordingly, vide order dated 27.05.1994, the SDM passed an order whereby it was held that land in dispute is in Khasra No. 561/421 and it does not belong to respondent no. 2.

7. Ld. Counsel further submits that the petitioner filed Writ Petition being W.P.(C) No. 3503/1998, which was disposed of by this Court on the basis of statement made in the Suit that the petitioner shall not be dispossessed except in accordance with law.

8. It is further submitted that to the utter surprise of the petitioner, the respondents issued Notification under-Section 4 of the Land Acquisition Act on 10.09.2002. Accordingly, on 15.06.2004 a survey was conducted by respondent no. 2.

9. Ld. Counsel further submits that on apprehending the demolition, the petitioner filed a Civil Suit bearing no. 170/2004. However, on 16.04.2004, the possession of the land of the petitioner was taken by the respondents. On 15.06.2004, a self-serving survey was carried out by the SDM and held that the property is in Khasra No.414.

10. Ld. Counsel submits that by the said self-serving survey, Khasra No. 561/421 was changed into Khasra No. 414. Accordingly, another demarcation in respect of adjoining property was carried out on 24.03.2005 and it was held that the boundary wall constructed by the DDA in the land of the petitioner was not in Khasra No. 414.

11. Thereafter on 24.06.2005, a Notification under Section 48 (1) of the Land Acquisition Act was issued, whereby the land was de-notified from acquisition. Ld. Counsel submits that on 10.08.2005, land of the petitioner was de-notified under the aforesaid Notification. Accordingly, the petitioner withdrew the Civil Suit with liberty to take appropriate proceedings in accordance with law.

12. Ld. Counsel further submits on 21.11.2005, petitioner filed Writ Petition being W.P.(C) No. 22140/2005 *inter alia* on the ground that the respondents utilized part of the land of the petitioner for construction of missing link Road No. 43 and are not restoring the possession of the land to the petitioner.

13. Ld. Counsel further submits that action of the respondents is totally arbitrary, illegal, unjustified and in violation of Article 300-A of the Constitution. Vide order dated 23.11.2005, this Court directed the Deputy Commissioner / In-charge of Village-Saleempur Majra, Madipur, Delhi, to carry out demarcation on the site on 28.11.2005. However, the demarcation carried out was not in conformity with the direction of this Court. The said proceedings were not accepted by this Court and vide order dated 20.12.2005, this Court directed to carry out demarcation under the personal

supervision of the Deputy Commissioner. Accordingly, on 30.05.2006, the petitioner filed objections to the said demarcation proceedings.

14. Thereafter, this Court vide order dated 20.02.2008, directed that since there is a provision of Revision, the petitioner was given liberty to approach Financial Commissioner by way of Revision. Accordingly, the petition was disposed of with the directions mentioned above. On 28.02.2011, the Revision Petition came up for consideration before the Financial Commissioner, who was pleased to allow the objections of the petitioner, thereby setting aside the demarcation proceedings carried out on 16.01.2006 and 27.01.2006.

15. Ld. Counsel for the petitioner has asserted that since order of Financial Commissioner has obtained finality, the petitioner is entitled to be put back in the same position as existing on 16.04.2004 and the possession of the land is liable to be restored back to the petitioner.

16. On the other hand, Id. Counsel appearing on behalf of the respondents submits that land taken over by the respondents vide Notification in question was from the Khasra No. 414 and not from Khasra No. 561/421.

17. In the counter-affidavit filed on behalf of respondent nos. 1 to 3 it is stated as under:

“15. That vide letters dated 02.09.2014 and 11.01.2005, the respondent no. 3 sent his comments along with a copy of the report of the SDM (SV) and stated that Khasra No. 561/421 was not part of Road no. 43 and as such requested for de-notification of the same at the earliest. The report of the SDM (SV) revealed that land measuring 1382 Sq. mtr. which had been notified and possession of which had been taken / handed over to PWD

(respondent no. 2) was a part of Khasra No. 414, instead of Khasra No. 561/421.

16. That the respondent no. 3 {LAC (NW)} had returned the cheque for Rs.53,12,187/- the amount which had already been placed at his disposal towards 80% compensation. The respondent no. 3 requested for de-notification of Khasra No. 561/421 (1382 Sq. mtr.).

17. That on 31.05.2005, a meeting was convened by the Joint Secretary (L & B) to discuss the issue relating to acquisition / de-notification of land measuring 1382 sq. mtr. and refund of Rs.1,32,80,467/- which was attended by the respondent no. 3, Executive Engineer/PWD and SDM (SV). The Executive Engineer/PWD had provided a copy of sizra. It was agreed that area measuring 1382 sq. mtr. which had been notified and possession of which had been taken over, falls in Khasra No. 414 instead of 561/421 and as such the same (i.e. 561/421) be recommended for de-notification.

18. That the proposal for de-notification of the aforesaid land, i.e., 561/421 (1382 sq. mtr.) was placed before the competent authority, i.e., the Lt. Governor of Delhi for approval. On 12.06.2005, the Lt. Governor approved the said proposal which is as under:

“I agree to the proposal submitted by Pr. Secretary (L&B) for de-notification of land in Khasra NO. 561/421, measuring 1382 sq. mtrs., in village Salimpur Majra, Madipur acquired for construction of Road no. 43. While doing so, I would like to point out that invocation of Section 17 (1) and (4) in every case and issuing Notification under Section 4 & 6 together without the 5A inquiry leads to such kind of mistakes. The revenue staff and the Land Acquisition Collector should be made answerable for such lapses.

In future, proposals for notification under Section 6 of the Land Acquisition Act and invoking Section 17 (1) and (4) should be exercised sparingly and Section 5A Inquiry should be condoned in each case. It is mandatory of the Land

Acquisition Collector and the field revenue staff to visit the actual site before proposing to the Government notification under Section 6.

*Sd/- (in English) 12.06.2005
(B.L. Joshi)
Lt. Governor, Delhi ”*

18. Admittedly, the possession of the land in Khasra No. 561/421 was taken over from the petitioner and thereafter structure upon the said land was also demolished.

19. In view of the facts and circumstances mentioned above, I am of the considered opinion that the land was taken from Khasra No. 561/421 and thereafter changed to Khasra No. 414. The possession of the same shall be restored to the petitioner by ignoring the Nos. of the Khasras being Khasra No. 561/421 or new Khasra No. 414.

20. Accordingly, respondents are directed to comply the order passed by this Court within two months from today.

21. In view of above, petition is allowed.

**SURESH KAIT
(JUDGE)**

AUGUST 04, 2014
jg/sb