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

+ **W.P.(C) 1448/2013 & CM Nos.2721/2013 (Stay)**

PAWAN KUMAR SETH Petitioner

Through: Ms. Beena Shaw N. Soni and
Mr. Sagar Anand, Advs.

versus

CUSTODIAN OF ENEMY PROPERTY OF INDIA

AND ORS

..... Respondents

Through: Mr. Jaswinder Singh, Adv. for R1.
Mr. Satvik Varma, Adv. for R2 & 3.
Mr. Rajeev Virmani, Sr. Adv. with
Mr. Ashish Kothari, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **16.01.2015**

1. Though via this writ petition several reliefs are sought, after some arguments, Ms. Soni, for the moment and at this stage, has confined her arguments to one singular point, which is that, after the Deputy Custodian of Enemy Property had passed an order dated 30.1.2013, a representation was made to the Custodian of Enemy Property, whereby a notice was issued for consideration of the petitioner's representation.

1.1 Ms. Soni says that the notice in that behalf, which is dated 11.2.2013, indicated that the petitioner could appear and represent his case before the Custodian of Enemy Property, on 5.3.2013, between 11.00 am and 5.00 pm.

1.2 Ms. Soni contends that before this date could reach, the Custodian of Enemy Property issued a certificate under Section 12 of the Enemy Property

Act, 1968 (in short the Act). The said certificate and the consequent orders that followed are appended as Annexures 'F', 'G' and 'H' to the petition and are dated 18.1.2013, 30.1.2013 and 08.02.2013.

2. When the writ petition was moved, in the first instance, this aspect was brought to my attention, whereupon notice was issued in the petition.

2.1 Custodian of Enemy property was represented by Mr. Jaswinder Singh, on the said date.

2.2 Interim orders were issued to the effect that till the next date of hearing, orders dated 18.1.2013 and 8.2.2013 shall remain stayed.

2.3 Ms. Soni goes on to say that, as a matter of fact, the petitioner was aggrieved even when a list of Enemy Properties was issued, in which, the property in issue (which is described as : property bearing No.254-255, Ward No.2, Chandni Chowk near Kacha Bansi Ram, New Delhi, and in which the petitioner, claims undivided share to the extent of 50%), was included.

2.4 It is, therefore, the contention of Ms. Soni that without waiting for the petitioner to make an appropriate representation, the Custodian of Enemy Property could not have passed order dated 18.01.2013, which led to issuance of two consequent orders dated 30.01.2013 and 08.02.2013.

3. On behalf of respondent No.1, which is the contesting respondent, a counter affidavit has been filed. Respondent Nos.2 and 3, I am told, have adopted the said counter affidavit.

4. The facts, which have been indicated above, are not disputed. Therefore, without going into the merits of the contentions raised by the petitioner, for the moment, I intend to set aside the certificate issued under

Section 12 of the Act, which is dated 18.1.2013 and the consequential orders which followed thereupon, being: orders dated 30.1.2013 and 8.2.2013; for the reason that once the Custodian of Enemy Property decided to give an opportunity to the petitioner to represent his case, which was undoubtedly a fair approach, he could not have thereafter done an about-turn and passed orders which foreclosed effective representation.

5. There is no specific prayer with respect to the consequential orders. The prayer made is only with respect to reconsideration of the two representations made by the petitioner, which are dated 16.8.2011 and 30.1.2013.

6. In addition to the above, there is though, a prayer made for setting aside the certificate dated 18.1.2013, issued under Section 12 of the Act.

7. Accordingly, the Custodian of Enemy Property will consider the two representations submitted by the petitioner and pass a reasoned order in that behalf without being influenced by the orders set aside by this court.

8. Since, I have taken recourse to this methodology, for the moment, I am not inclined to set aside the report dated 19.12.2012 as this would be a matter which would be considered by the Custodian of Enemy Property.

9. In case the petitioner is aggrieved by any order that Custodian of Enemy Property may pass qua his representations, the petitioner, will be free to take recourse to an appropriate remedy, albeit, in accordance with law.

10. The petition and the captioned application are, accordingly, disposed of.

CM No.10180/2013

11. It will be open to the applicant to make a representation to the

Custodian of Enemy Property for consideration of his submission qua his half-share in the property in issue.

12. Accordingly, the said application is also disposed of.

13. Dasti.

RAJIV SHAKDHER, J

JANUARY 16, 2015

s.pal

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