

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

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Date of decision: 15th May, 2015

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LPA No.71/2015

PUBLIC WORKS DEPARTMENT & ANR. Appellants

Through: Ms. Zubeda Begum with Ms. Sana
Ansari & Ms. Vanessa Singh, Advs.

Versus

ASHOK KUMAR & ANR.

.... Respondents

Through: Mr. Ram Kumar, Adv. for R-1.
Mr. Yeeshu Jain, Adv. with Ms. Jyoti
Tyagi, Adv. for LAC.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 4th August, 2014 of the learned Single Judge of this Court allowing W.P.(C) No.7649/2011 filed by the respondent No.1 by directing the appellants to restore possession of land bearing "Khasra No.561/421 and thereafter changed to Khasra No.414" to the respondent No.1 / writ petitioner, "ignoring the numbers of the khasras being Khasra No.561/421 or new Khasra No.414". The appeal is accompanied with an application for condonation of 159 days delay in filing thereof.

2. Notice of the appeal as well as application for condonation of delay was issued. The respondent No.1 did not file any reply to the application for condonation of delay. Thereafter, we heard the counsel for the appellants as well as the counsel for the respondent No.1 [respondent No.2 is the Land Acquisition Collector (LAC), Narela Circle] and reserved judgment.

3. As aforesaid, the respondent No.1 has not filed any reply to the application for condonation of delay. Even during the hearing, the said application was not opposed and rather the arguments were addressed on merits. The appellants, in the application have pleaded that they came to know of the impugned judgment, though pronounced on 4th August, 2014, only on 12th November, 2014 and wherefrom the appeal is within time. The said application is supported by an affidavit of the Executive Engineer of the appellant No.1. In the absence of any opposition, we accept the cause pleaded for condonation of delay and find the same to be sufficient. Accordingly, the delay in filing the appeal is condoned.

4. The respondent No.1 filed the writ petition from which this appeal arises, pleading; i) that the respondent No.1 / writ petitioner vide Sale Deed dated 30th August, 1991 purchased the land ad-measuring 1 Bigha 16 Biswas forming part of Khasra No.561/421 of village Saleempur Majra, Madipur, Delhi; ii) that vide

Notification dated 10th September, 2002 under Section 4 read with Section 17(1) and Section 17(4) of the Land Acquisition Act, 1894, out of the aforesaid land, land ad-measuring 1 Bigha 13 Biswas of the respondent No.1 / writ petitioner was sought to be acquired for construction of missing link of Road No.43; the said notification was followed by a Notification dated 5th September, 2003 under Section 6 read with Section 17(1) of the Land Acquisition Act; iii) that the possession of the said 1 Bigha 13 Biswas of land was accordingly taken over and handed over on 16th April, 2004; iv) that however vide Notification dated 24th June, 2005 under Section 48(1) of the Land Acquisition Act, the said land was withdrawn from acquisition; iv) however the possession of the land was not restored back to the respondent No.1 / writ petitioner and which led him to file earlier W.P.(C) No.22140/2005 in this Court and vide order dated 23rd November, 2005 wherein direction was issued for carrying out of demarcation of the site; v) however there were disputes about demarcation and finally vide order dated 20th February, 2008 in W.P.(C) No.22140/2005, this Court directed the respondent No.1 / writ petitioner to avail of the remedy provided of Revision against the demarcation proceedings; vi) that the respondent No.1 / writ petitioner accordingly filed a Revision Petition before

the Financial Commissioner; vii) the Financial Commissioner vide order dated 28th February, 2011 set aside the demarcation proceedings.

Thereafter, the writ petition from which this appeal arises, claiming the reliefs of restoration of possession of land ad-measuring 1 Bigha 16 Biswas, was filed.

5. The learned Single Judge has allowed the writ petition as aforesaid reasoning that since in pursuance to the acquisition notifications the possession of the land was taken over from the respondent No.1 / writ petitioner, the appellants / respondent No.2, upon the land being de-notified from acquisition, are liable to restore back the possession thereof to the respondent No.1 / writ petitioner.

6. Though the reasoning given by the learned Single Judge for allowing the writ petition, on the face thereof is simple, logical and the only one possible on a view of the case of the respondent No.1 / writ petitioner only but on closer scrutiny is found to be *de hors* the stand of the appellants in their counter affidavit and *de hors* the orders in the writ petition earlier filed by respondent No.1.

7. It was / is the case of the appellants in the counter affidavit to the writ petition as well as in the memorandum of appeal:

- (a) that the land from which the link road is passing is part of Khasra No.565/414/1; the said land was taken over by the appellants from the defence authorities;
- (b) that though pursuant to the notifications under Sections 4 and 6 of the Land Acquisition Act, demarcation was carried out before possession of the land bearing Khasra No.561/421 was handed over by the respondent No.1 / writ petitioner to the appellant on 16th April, 2004 but subsequently it was found that the said land was part of Khasra No.414 and not of Khasra No.561/421 and owing whereto, the land bearing Khasra No.561/421 was de-notified;
- (c) that even in demarcation pursuant to directions in W.P.(C) No.22140/2005 earlier filed by the respondent No.1 / writ petitioner, the position which emerged was that Khasra No.561/421 is unascertained and that all demarcation reports of the past in respect of the said Khasra number were set aside;

- (d) that till date, there is no tatima, no demarcation giving exact location of Khasra No.461/421 on the ground;
- (e) that unless fresh demarcation is carried out no one can say where Khasra No.561/421 is.

8. As is obvious from the aforesaid, the writ petition from which this appeal arises was the second round of writ petition after de-notification of the land from acquisition. Immediately after the land was de-notified from acquisition, the respondent No.1 had filed W.P.(C) No.22140/2005 for the same relief as claimed in the writ petition from which this appeal arises. The position then also was that the possession of the land had been taken from the respondent No.1 / writ petitioner pursuant to notifications for acquisition thereof and the appellants and respondent No.2 were required to, upon the land being de-notified from acquisition, deliver back possession thereof to the respondent No.1. Though the reasoning given by the learned Single Judge in the impugned order would have applied at that stage also but the learned Single Judge before whom that writ petition was pending did not so direct and on the contrary ordered demarcation for identification of the land, reasoning that situation at site was uncertain and it was not definite that the land of which possession pursuant to acquisition notifications was taken on 16th April, 2004 was situated

in Khasra No.561/421 or not. The respondent No.1 / writ petitioner at that time did not contend that there was no need for demarcation and that he was entitled to the land which pursuant to acquisition had been taken over from him and which upon being de-notified was liable to be returned to him. It is the plea of the appellants that in fact the order for demarcation “to identify Khasra No.561/421” was a consent order. Order dated 23rd November, 2005 in W.P.(C) No.22140/2005 is reproduced in the memorandum of appeal in this regard. The order in the earlier writ petition directing demarcation, has thus attained finality. As per the report of the said demarcation, Khasra No.561/421 was heavily built upon and privately owned land. Even upon the respondent No.1 / writ petitioner objecting to the said demarcation, the learned Single Judge then did not hold that the said demarcation report was wrong for the reason that possession of the land pursuant to acquisition had been taken from the respondent No.1 / writ petitioner. On the contrary, the writ petition was disposed of with liberty to the respondent No.1 / writ petitioner to challenge the said demarcation report before the Financial Commissioner. The respondent No.1 / writ petitioner was satisfied therewith and allowed the said order also to have attained finality and preferred a Revision Petition before the Financial Commissioner.

9. The Financial Commissioner has disposed of the said Revision Petition vide order dated 28th February, 2011, finding that the demarcation done was not in accordance with the rules / procedure prescribed therefor and accordingly has set aside the demarcation report. The Financial Commissioner has however not held that the land of which possession pursuant to acquisition notifications was taken on 16th April, 2004 was land bearing Khasra No.561/421. The Financial Commissioner has otherwise also not identified Khasra No.561/421.

10. The position thus remains the same as it was at the time the earlier writ petition was filed by the respondent No.1. Neither is the situation at site certain as yet nor is it definitely known whether the land of which possession was taken on 16th April, 2004 was situated in Khasra No.561/421 or not.

11. The respondent No.1 / writ petitioner however, instead of applying for fresh demarcation, preferred the writ petition from which this appeal arises and which has been allowed merely on the logic that since pursuant to acquisition possession of the land was taken from the respondent No.1 / writ petitioner, the respondent No.1 / writ petitioner is liable to be put back into possession thereof, whether it be in Khasra No.561/421 which the respondent No.1 / writ petitioner claims to be his, or in Khasra No.565/414.

12. We have wondered that when the said relief was denied to the respondent No.1 / writ petitioner in the writ petition earlier filed by him and which was disposed of with the direction that the land needs to be identified, how can the same relief be granted in the second round, without any change in circumstances i.e. without the situation at site being certain and without it being definitely known whether the land of which possession was taken on 16th April, 2004 was situated in Khasra No.561/421 or not. The learned Single Judge has totally ignored that on the same reasoning on which he has allowed the writ petition, the respondent No.1 / writ petitioner in the earlier round had not been found entitled to the same relief. Merely because the demarcation report was set aside by the Financial Commissioner in Revision Petition would not change the position. The fact that the position is uncertain today also was accepted by the learned Single Judge also. It is for this reason only that direction for delivery of possession of land, 'ignoring the khasra number' was issued. We are also unable to find any basis for the notion formed by the learned Single Judge that Khasra No.561/421 had been changed to Khasra No.414. The claim of the respondent No.1 / writ petitioner was for Khasra No.561/421 only and no right with respect to land in Khasra No.565/414 has been disclosed. Thus, no

direction for delivery of possession of land in Khasra No.565/414 could have been issued.

13. The Supreme Court, in ***State of U.P. Vs. Labh Chand*** (1993) 2 SCC 495 held that if a learned Single Judge of the High Court could entertain a second writ petition of a person respecting a matter on which his first writ petition was dismissed, even if *in limine*, by another Single Judge of the same Court, it would encourage a unsuccessful writ petitioner to go on filing writ petition after writ petition and have it brought up for consideration before the Judge after another and that such a thing if allowed to happen could result in giving full scope and encouragement to an unscrupulous litigant to abuse the process of the High Court in that any order of any bench could be ignored with impunity; this would lead to introduction of disorder, confusion, chaos relating to exercise of writ jurisdiction and there could be no finality to an order. Reference in this regard may also be made to ***Indian Council for Enviro Legal Action Vs. Union of India*** (2011) 8 SCC 161 where it was also held that opening the door for re-arguing would be opening a flood gate which will cause more wrongs in the society at large at the cost of rights.

14. The case of the appellants through out has been that it as well as the respondent No.2 LAC at the time of acquiring the land were under

misconception that the same was in Khasra No.561/421; subsequently, it was realized that the land of which the possession in pursuance to acquisition had been taken was in Khasra No.414 and belonged to the defence estate and accordingly Khasra No.561/421 of which notification had mistakenly been issued was de-notified. If that be the position, the respondent No.1 / writ petitioner cannot be granted possession of land which admittedly is not his. The same would result in the respondent No.1 / writ petitioner having possession of land in Khasra No.561/421 as well as land in Khasra No.414.

15. However the same is not to be understood as meaning that the respondent No.1 / writ petitioner is to be left remediless. The question, where the land ad-measuring 1 Bigha 16 Biswas of the respondent No.1 / writ petitioner in Khasra No.561/421 is still to be determined. Though as per one demarcation report, the said land is heavily built up in private possession but that demarcation report has been set aside by the Financial Commissioner on technical grounds. However if on fresh demarcation, it is found that land ad-measuring 1 Bigha 16 Biswas in Khasra No.561/421 is same land as the land of which possession was taken pursuant to acquisition notifications, then the respondent No.1 / writ petitioner would certainly be entitled to possession thereof.

16. We, accordingly, while allowing the appeal and setting aside the impugned judgment of the learned Single Judge allowing the writ petition filed by the respondent No.1 / writ petitioner, dispose of the said writ petition with a direction to the authorities concerned to upon appropriate steps for demarcation of land ad-measuring 1 Bigha 16 Biswas in Khasra No.561/421 being taking within one month hereof, have the said land demarcated / identified in accordance with law within a period of six months therefrom.

17. We further direct the concerned authorities to, while carrying out the said demarcation proceedings, also demarcate the land of which the LAC / appellants were on 16th April, 2004 put into possession in pursuance to the acquisition notification.

18. We yet further direct that the demarcation report to be a reasoned one.

19. In the event of it being found that the LAC / appellants were on 16th April, 2004 put into possession of land ad-measuring 1 Bigha 16 Biswas in Khasra No.561/421, the appellants / LAC shall remain liable to put back the appellants into possession of the said land.

20. However if it is found that the LAC / appellants on 16th April, 2004 were not put into possession of land ad-measuring 1 Bigha 16 Biswas in Khasra

No.561/421 belonging to the appellants and that the land in Khasra No.561/421 is separate and distinct from the land of which possession was taken over, the appellants / LAC cannot be made liable to put back the respondent No.1 / writ petitioner in possession thereof.

21. Any party remaining aggrieved from the demarcation proceedings will have remedies in law.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MAY 15, 2015
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