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

% *Judgment delivered on: 27th January, 2015*

+ **W.P.(C) 5744/2014**

SHALAV RASTOGI Petitioner
Represented by: Mr.Amit Sibbal, Senior
Advocate with Mr.Attin Shankar
Rastogi, Mr. Shiv Kant Arora
and Mr. Prateek Yadav,
Advocates.

Versus

UNION OF INDIA & ORS. Respondents
Represented by: Dr. Ashwani Bhardwaj,
Advocate for R-1 & 7.
Mr. Jagjit Singh, Mr. S. Bajpai
and Ms.Nisha, Advocates and
Mr. Jasmeet Singh, CGSC for
Respondent/UOI.
Mr. V.K. Tandon and
Mr. Rakesh Mittal, Advocates
for Respondents No. 2 to 4 and
8.
Mr. Saqib, Advocate for
Respondent No.6.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, petitioner seeks directions thereby directing the respondents to forthwith release the property bearing No.R-97, Ansari Road, Daryaganj, Delhi, from requisition and

handover the peaceful and vacant possession of the said property to the petitioner.

2. Further seeks directions thereby directing for appointment of an Arbitrator to determine the damages and compensation for unauthorized and illegal occupation of the property at R-97, Ansari Road, Daryaganj, Delhi, by the respondents.

3. The present petition is a third round of litigation before this Court. Vide earlier order dated 12.05.2014 passed in W.P.(C) No.2982/2014, this Court directed as under:-

“ Consequently, present writ petition is disposed of with a direction to Union of India, Ministry of Railways to dispose of petitioner’s representation dated 30th January, 2014 in accordance with law as expeditiously as possible. This Court may mention that though this representation is also addressed to Lt. Governor, Delhi as well as Principal Secretary, Department of Land and Building, yet this Court is of the view that the representation should be dealt with only by Ministry of Railways as the acquisition notifications have already been quashed by the Division Bench of this Court.

Needless to say the representation shall be decided by Ministry of Railways on its own merits and without being influenced by any observation made by this Court. In the event, the petitioner is aggrieved by decision of Ministry of Railways, he shall be at liberty to file appropriate proceedings in accordance with law.”

4. Mr. Amit Sibbal, learned senior counsel appearing on behalf of the petitioner has drawn the attention of this Court to communication dated 22.05.2014 by Northern Railways, whereby sub paras (ii) and

(ix) of para 2 stated as under:-

“ii) Sub para ii) of para 2 is wrong and is denied. It is denied that the department is in illegal possession of any property. Moreover the property was requisitioned by Delhi Administration and not by the Northern Railway and the same was handed over to the department by Delhi Administration in lieu of Railway Building No.1, Rajpur Road, Delhi, which was being used by the Delhi Administration for their office purposes.

ix) Sub para ix) of para 2 is wrong and is denied. Moreover the applicant has to approach Delhi Administration first as Delhi Administration is not vacating the property taken by them of the department. The answering department has not directly concerned with the applicant.”

5. Moreover, in reply dated 22.05.2014 of DRM Office, Northern Railways, New Delhi, to the representation dated 30.01.2014 made by the petitioner, stated as under:

“You might be aware that the Delhi Administration requisitioned this house and gave it to the Northern Railway in lieu of Railway’s building No.1, Rajpur Road, which was being used by them for their offices.

As it is, Railway’s building at Rajpur Road has not been vacated and handed over to us as yet. It would be appreciated that till such time this is done, the Railway is not in a position to return house no.97, Daryaganj.

We would like to advise you that the Delhi Administration has already been requested strongly to give vacant possession of 1, Rajpur Road immediately. The Railway will have no objection in derequisitioning House No.97, Daryaganj as soon as Railway’s building on Rajpur Road is handed over by the Delhi Administration. In order to

resolve your grievance, you may kindly approach the Delhi Administration.”

Further stated as under:-

“It is, therefore, respectfully prayed that the representation of the applicant be dismissed with costs, in the interest of justice. The applicant has no order against the department and moreover the Delhi Administration is the competent authority to pass any order and not the department. Actually the department has received the property in lieu of property no. 1, Rajpur Road, Delhi from the Delhi Administration.

NOTE:- Kindly take reference of GM/Engg. L.N.762-W/55/111(W-1) dated 28th September, 1970 in which it is stated that Delhi Administration has already been requested to give possession of 1, Rajpur Road immediately. Till then it would not be possible to release the House No.97, Darya Ganj. You are requested to kindly enquire with state authority to release the Railway property no.1, Rajpur Road.”

6. Learned senior counsel further submitted that the petitioner has become a shuttle cock between two Departments and without any justification the possession of the property has not been delivered to the petitioner from the last around 17 years.

7. Respondent Nos. 1 and 7 have filed their affidavits on 27.10.2014, whereby it is stated that the property in question was never requisitioned by the Railways, however, they are occupying the subject property for residential purpose of its staff in the capacity of lessee. The Railway Administration had given property bearing No. 1, Rajpur Road, Delhi, on lease to the respondent Nos. 2 to 4 (wrongly

mentioned as respondent Nos. 2 to 6). Since the aforesaid property was being used by Delhi Administration, therefore, property No. R-97, Ansari Road, Daryaganj, Delhi, was requisitioned by respondent Nos. 2 to 4 and handed over to the Railways for residential use vide letter dated 09.06.1945. The subject property is on lease and the rent to be paid by Delhi Administration for property No. 1, Rajpur Road, Delhi, was set off against rental of subject property and Rs.139.12/-, which was excess rental after set off was being paid by Delhi Administration to the Railways.

8. It is further stated that the Railways has always been willing and ready to hand over the possession to respondent Nos. 2 to 4, however, despite several letters issued by Railways to the respondents mentioned above, they never came forward to hand over the property bearing No. 1, Rajpur Road, Delhi, to the Railways and take possession of the subject property.

9. Mr. Praveen Kumar, learned counsel appearing on behalf of respondent Nos. 1 and 7 submitted that staff of the Railways along with their families are residing in the property in question and if this Court is inclined to pass order to vacate the property, then the staff has to be relocated with their respective families to some other place, for which some reasonable time may be allowed to the Railways to get the subject property evicted and relocate the staff before handing over the possession to respondent Nos. 2 to 4.

10. Learned counsel further submitted that respondent Nos. 1 and 7 are not responsible for any suffering caused to the petitioner and his family members as Railways is occupying the subject property as lessee to respondent Nos. 2 to 4.

11. Learned counsel further submitted that vide letter dated 23.08.1948, the Home Secretary to the Chief Commissioner, Delhi, communicated to Chief Administrative Officer, Eastern Punjab Railways, Delhi, regarding building No. 1, Rajpur Road, Delhi, that the building in question was leased by the Railway Department to Delhi Administration and not to any particular office or offices under them. The original office building was allocated by Delhi Administration to the Court of Honorary Magistrates, Offices of the Cooperative Departments and Special Press Adviser, Delhi, and during the war, it was allotted to the Director of Industries and Labour, Delhi. All these charges were made for the sake of administrative convenience, however, no consent of the Railway Administration was taken, whereas, the consent was necessary.

12. Regarding restoration of the building No. 1, Rajpur Road, Delhi, to the Railway Department for the use of their offices, it is pointed out that building at R-97, Ansari Road, Daryaganj, Delhi, has already been placed at the disposal of the Railway Department in lieu of this building. Vide letter dated 19.04.1948, the Chief Commissioner, Delhi, sanctioned the payment of Rs.139.12/- per month, being the excess amount payable for the building at R-97, Ansari Road,

Daryaganj, Delhi, in lieu of the building No. 1, Rajpur Road, Delhi, w.e.f. 21.06.1948 in due course.

13. Thereafter, vide letter dated 01.01.1985, the Railway Ministry conveyed to the Joint Secretary, Delhi Administration and LSG Department that the premises was leased to Delhi Administration for the *bona fide* use, which has not been kept and at the same time, violated the terms of the agreement.

14. Thereafter, vide letter dated 23.08.1985, the Railway again conveyed the Joint Secretary, Delhi Administration, that the building belonging to the Railways, i.e., 1, Rajpur Road, Delhi, stands licensed to Delhi Administration since 1939 under the terms of agreement signed by the Chief Commissioner, Delhi, on 30.09.1950. It has been represented by the Divisional Railway Manager, Northern Railways, New Delhi, that the portion of said Railway building has been subletted to Jammu and Kashmir State Road Transport Corporation by Delhi Administration, without obtaining prior approval of the Railways. Thus, this action was in contravention of Clause 6 of the Agreement mutually agreed upon and the same reads as under:

“In this connection this is to point out that building no. 97, Darya Ganj, Delhi was requisitioned by Delhi Administration for Northern Railway. According to the latest instructions received from Government of India, the Central Government has to release from requisition any property requisitioned or deemed to be requisitioned by 10.03.1985. The Railways have no objection to vacate the building provided at 1, Rajpur Road, Delhi, which belongs to Railways is handed back to them.”

15. Mr. Saqib, learned counsel appearing on behalf of the respondent No.6/Ministry of Urban Development, drawn the attention of this Court to the Notification under Section 4 of the Land Acquisition Act, 1894, (hereinafter to be referred as ‘the Act’) dated 06.03.1987, whereby the property No. 1, Rajpur Road, Delhi, was proposed to be acquired for the purpose of housing of the Government officers and Government servants and the property in question, i.e., R-97, Ansari Road, Daryaganj, Delhi, for the residential use of Government servants.

16. Mr. Saqib further submitted that the said Notification was challenged by the petitioner in WP(C) No. 900/1987. The same was allowed by this Court vide its judgment dated 27.05.2004 as under:-

“3. The contention of the petitioner is well founded. The provisions of the Act are meant for acquisition of the land. If there is a structure standing thereon, the Government can make use of the said structure as well by paying compensation to the land owner for land use structure. However, the provision cannot be used for acquisition of structure only without acquiring the land. This issue is no more res integra and stands concluded by a recent decision of the Supreme Court is the case of Union of India & Ors. v. Krishan Lal Arneja & Ors. 2004 (5) SCALE 207 which related to same very notification, namely, notification dated 6th March, 1987, which was quashed by the Supreme Court and by holding so the Supreme Court held that entire notification warrants to be quashed.

4. This writ petition is accordingly allowed. Rule is made absolute. Notification dated 6th March, 1987

under Section 4 and Declaration dated 10th March, 1987 under Section 6 of the Act and subsequent proceedings taken pursuant thereto in so far as they relate to the petitioner are hereby quashed.”

17. Thus, the Notification dated 06.03.1987 under Section 4 of the Act and declaration dated 10.03.1987 under Section 6 of the Act and subsequent proceedings have been quashed. Therefore, both the aforesaid properties are not under acquisition and are free from all encumbrances.

18. In view of above, vide order dated 11.12.2014, the Railway Department and the NCT of Delhi were directed to sit together and chalk out a plan of vacating the property in question, i.e., R-97, Ansari Road, Daryaganj, Delhi.

19. Accordingly, a meeting was held on 15.12.2014 in the Chamber of Divisional Commissioner of Delhi, which was attended by the following Officers:

1. Sh. S.N. Sahai, Divisional Commissioner-Cum-Principal Secretary (Revenue), Delhi.
2. Sh. R.C. Meena, Dy. Commissioner (Central), Revenue Department, Delhi.
3. Sh. Manish Jain, SDM (Civil Lines), Delhi.
4. Sh. Anupam Singh, Din. Suptd. Engineer / Estate, Delhi.
5. Sh. P.K. Aggarwal, CE/MRTS N. Rly. Delhi.
6. Sh. Girish Chand Lawania, Astd. Divisional Engineer/Estate, Delhi.

7. Sh. Jawed Ahmed, SSE/Eviction, Delhi.

8. Sh. M.H. Ansari, Chief Surveyor/Com. N.Rly. HQ.

20. In the said meeting, the Divisional Commissioner referred to the documents vide which it has been mentioned that property at 1, Rajpur Road, Delhi, was leased by Railways to Delhi Administration in the year 1939 on year-to-year basis and there was no *quid-pro-quo* as regards any other property at that point of time.

21. It was also agreed by all that as a matter of record property in question, i.e., R-97, Ansari Road, Daryaganj, Delhi, was requisitioned by Le Bailly, ICS, Collector, Delhi, under Section 75A of the Defence in India Rules in the year 1945 vide order dated 09.06.1945 and directed that its possession should be rendered to the Divisional Superintendent, Northern Railways. The Divisional Commissioner, Delhi, also observed that the leasing of property at 1, Rajpur Road, Delhi, by Railways to Delhi Administration in the year 1939 and requisitioning of property at R-97, Ansari Road, Daryaganj, Delhi, in the year 1945, were two separate and independent events and as such there was no *quid-pro-quo*.

22. Thereafter, communication exchanged between the Railways and Delhi Administration, mentions that property at 1, Rajpur Road, Delhi, was being given in lieu of property No. R-97, Ansari Road, Daryaganj, Delhi. However, it is only a letter or communication in which words '*in lieu of*' have been used at some places but as such

there is no Formal Agreement or Memorandum of Understanding to establish that property at 1, Rajpur Road, Delhi, was received in exchange of property at R-97, Ansari Road, Daryaganj, Delhi. In fact, property at 1, Rajpur Road, Delhi, was received by Delhi Administration in the year 1939, i.e., much earlier than the requisitioning of property at R-97, Ansari Road, Daryaganj, Delhi, which took place in the year 1945. Thus, it is recorded in the minutes of the said meeting that it is not understood as to how a property which was already taken over by Delhi Administration as a lessee could be considered to be an exchange of property which was to be exchanged under a different Act altogether and that too after a period of 6 years, i.e., in 1945.

23. I have heard the learned counsel for the parties.

24. In the earlier round of litigation, this Court vide order dated 12.05.2014 passed in W.P.(C) No.2982/2014 directed the Ministry of Railways to dispose of the petitioner's representation dated 30.01.2014 in accordance with law as expeditiously as possible as this Court was of the view that the representation shall be dealt with by the said Ministry because the acquisition Notifications have already been quashed by the Division Bench of this Court.

25. Consequently, the petitioner received a communication dated 22.05.2014 from Northern Railways that property in question was requisitioned by the Delhi Administration and the same was handed

over to the Department of Railways. Therefore, the petitioner may approach the Government of NCT of Delhi for possession.

26. Moreover, the respondents No. 1 and 7 in their affidavit have stated that the Railways had already been willing and ready to hand over the possession, however, the respondents No. 2 to 4 never came forward to hand over the possession of the property of the Railways, i.e., property bearing No.1, Rajpur Road, Delhi, and to take the possession of the property in question, i.e., R-97, Ansari Road, Daryaganj, Delhi,.

27. The fact emerged that vide Notification dated 06.03.1987, issued under Section 4 of the Act, property No.1, Rajpur Road, Delhi, was proposed to be acquired for the purpose of housing of the Government offices & Government servants and the property in question, i.e., R-97, Ansari Road, Daryaganj, Delhi, for the residential purpose of the Government servants. The said Notification was challenged by the petitioner in W.P.(C) No. 900/1987, which was allowed vide judgment dated 27.05.2004. Accordingly, Notification dated 06.03.1987 under Section 4 of the Act and declaration dated 10.03.1987 under Section 6 of the Act and subsequent proceedings pursuant thereto insofar as they relate to the properties mentioned above were quashed. Therefore, both the aforesaid properties are out of the acquisition and free from all encumbrances. Thus, there is no reason to allow the respondents No.1 and 7/Railways to continue in possession of the property in question

and thereby deprive the petitioner of physical possession of the property any more.

28. It is pertinent to mention here that vide order dated 11.12.2014, this Court, keeping in mind the fact that the Railway Department and the NCT of Delhi, would conciliate and chalk out a plan of vacating the property in question, i.e., R-97, Ansari Road, Daryaganj, Delhi, granted time to the said Authorities, however, of no avail.

29. Despite orders passed by this Court in favour of the petitioner, he has become a shuttle cock between the Railway Department and the Government of NCT of Delhi, hence, moving from one authority to another, but has been unsuccessful in getting back the possession over the property in question.

30. Be that as it may, the petitioner cannot be left in lurch. As a consequence, the petition deserves to be allowed.

31. During arguments, learned counsel for the respondents No. 1 and 7 submitted that staff of the Railways with their families are residing in the property in question. If this Court would be inclined to pass order to vacate the property, then the staff has to be relocated with their respective families to some other place. Therefore, some reasonable time may be granted to the Railways to get the suit property evicted and relocate the staff before handing over the possession of the same.

32. I note, employees of respondents No. 1 and 7 are staying in the quarters in the property in question alongwith their families. Most of their children must be school going and the final exams of this

Academic Session are about to commence, therefore, the respondents No. 1 and 7 are directed to vacate the property bearing No.R-97, Ansari Road, Daryaganj, Delhi, and hand over the peaceful and vacant possession of the same to the petitioner within six months from today.

33. Needless to state that to avoid any inconvenience, the respondents No. 1 and 7 may take steps to get their property, i.e., 1, Rajpur Road, Delhi, evicted from the Government of NCT of Delhi.

34. Since the petitioner has not pressed prayer (ii) averred in this petition, therefore, this Court has not expressed any opinion upon the same. However, the petitioner is at liberty to seek remedy qua the aforesaid prayer before the appropriate Forum in appropriate proceedings, if so advised.

35. With the aforesaid observations, the petition is allowed.

JANUARY 27, 2015
jg/RS/sb

SURESH KAIT
(JUDGE)