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

+ RFA(OS) 154/2014 & CM No.19524/2014

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Date of decision: 26th March, 2015

ORUJ AHMED

..... Appellant

**Through: Mr. Bharat Bhushan Jain,
Adv.**

versus

RASHIDUDDIN & ORS

..... Respondents

**Through: Mr. Kirti Uppal, Sr. Adv.
with Mr. M. Amanullah, Mr.
Misbah B. Tariq and Mr.
Siddarth, Advs. for R-2 & 3.**

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S.TEJI

GITA MITTAL, J. (Oral)

1. The record of CS(OS)No.2310/2011 has been received.
2. We have heard learned counsel for the appellant and learned Senior Counsel for respondent nos.2 and 3. There is no appearance on behalf of respondent nos.1 and 4 despite service.
3. The appellant had filed the said suit for declaration and possession with regard to a plot bearing no.33 measuring 400 sq.yrds. located in Khasra No.378/172, measuring 2 Bighas, 3 Biswas, situated at Johri Farm, Okhla, New Delhi (hereinafter referred to as "suit property"). As per the plaint, one Shri Abdul

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Certify that the digital file and
physical file have been compared the
digital data is as per the physical file

RFA(OS)No.154/2014

Page 1 of 6

Rehman was the recorded owner of the suit property in the revenue records. It was also the case of the plaintiff that the said Abdul Rehman had executed a power of attorney in favour of respondent no.1 who had entered into physical possession through his maternal grandfather – Shri Abdul Rehman represented by the respondent no.1 as the general power of attorney holder. The appellant/plaintiff was placing reliance on the agreement to sell dated 30th April, 2009 executed by the respondent no.1/defendant no.1 as attorney in his favour as well as a general power of attorney dated 30th April, 2009 and possession letter dated 30th April, 2009 issued by defendant no.1 in his favour. The appellant claimed to have paid sale consideration of ₹10,00,000/- to Abdul Rehman through the attorney.

4. It appears that in respect of the suit property, in the year 1964, a notification under Section 4 of the Land Acquisition Act, 1894 came to be issued followed by a declaration under Section 6 in the year 1966. These acquisition proceedings culminated in an award being Award No.95/83-84 made in the year 1983-84 which was duly published. It is an admitted position that despite the said award, physical possession of the suit property was not taken over by the Land Acquisition Collector for the reason that it was built-up area. It is also an admitted position that so far as the compensation pursuant to the said award was concerned, on account of the disputes, the same stands deposited in accordance with the provisions of Section 30/31 of the Land Acquisition Act, 1894 with the court.

6

The above position is affirmed on the record of the suit by the statutory authorities.

5. It is necessary for us to note some proceedings which had been initiated by the respondent no.1 which are in the nature of the suit being CS(OS)No.2855/1996. In this suit, the defendant no.1 sought declaration to the effect that he was the owner of the land and that he had possession thereof as well. The plaint in this case came to be rejected by the learned Single Judge by an order dated 29th August, 2001 under Order VII Rule 11 CPC placing reliance on the aforesaid acquisition proceedings. It was held that in view of the Award under Land Acquisition Act, the land stood acquired by the government and vested with the Delhi Development Authority therefore, the defendant no.1 could not be given the relief of declaration or possession. It was noted in the order dated 29th August, 2001 that in case the defendant no.1 was aggrieved by the acquisition proceedings, the appropriate remedy for him was to challenge the same.

6. Inasmuch as the appellant has claimed to have acquired right in the suit property from the respondent no.1, the learned Single Judge has reiterated the findings in the order dated 29th August, 2001. In fact by the impugned order dated 30th September, 2014, the plaint in the CS(OS)No.2310/2011 has been rejected primarily on the ground that the suit land was a subject matter of acquisition. It has further been held that in view of the notification under Section 4 of the Land Acquisition Act, 1894 issued by the government in the year 1964, transfer in respect thereof stood

7

interdicted by operation of Section 4 of the Delhi Lands (Restriction on Transfers) Act, 1972 which prohibited any person from transferring by sale, mortgage, gift or else or otherwise any land or part thereof, which has been acquired by the Central Government. The learned Single Judge therefore, was persuaded to hold that the sale in favour of the appellant as relied upon by him was null and void and consequently, the suit was not maintainable.

7. One material statute which has intervened during the pendency of the suit has escaped notice. Our attention is drawn to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, Section 24 whereof reads as follows:

“24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the

proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

8. In the instant case, though the award stands made in the year 1983-84, however, it is an admitted position that compensation has not been paid to the recorded owner. It is also a fact admitted by statutory authorities that the possession has not been taken and therefore, even under Section 16 of the Land Acquisition Act, 1894, the acquisition is not complete.

9. It cannot be disputed that in these circumstances, the appellant deserved to have been given an opportunity to establish his case in accordance with law. The effect of the above statutory provisions also deserved to be considered. It is also noteworthy that respondent nos.2 and 3 are not claiming any right, title or interest in the property. However, the plaint was rejected on an objection under the Delhi Lands (Restriction on Transfers) Act, 1972 taken at the instance of these respondents.

10. In view of the above, the impugned order dated 30th September, 2014 is not sustainable and is hereby set aside and quashed. The matter is remanded for consideration afresh. Needless to say the impact of the statutory provisions noted by us hereinabove so far as the acquisition pursuant to the notification of

9

1966 and on the order dated 29th August, 2001 is left open for consideration in the suit. In case, the respondent nos.2 and 3 file an application in accordance with law for seeking rejection of the plaint setting out tenable grounds, the same may be considered by the learned Single Judge afresh.

However, the application being I.A.No.17544/2011 would stand disposed of.

11. The parties shall appear before the Joint Registrar for further proceedings in the suit on 24th April, 2015.

12. In view of the restoration of the proceedings in the suit, we direct status quo as on date with regard to the title, possession and construction of the suit property till further orders by the learned Single Judge or any other court.

13. This appeal as well as pending application are allowed in the above terms.


GITA MITTAL, J


P.S. TEJI, J

MARCH 26, 2015

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