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

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Date of decision: 11.08.2016

+ CM(M)534/2016

SHAHBUDDIN

...Petitioner

Through Mr.Jayant K.Mehta, Mr.Saud and
Mr.Shaurya Kothiala, Advs.

Versus

STATE OF UTTAR PRADESH & ANR.

...Respondent

Through Mr.Anil Mittal, Mr.Kamal Aggarwal,
Advs. for R-1
Mr.Tarun Johri, Adv. for R-2/DMRC

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present petition is filed under Article 227 of the Constitution of India seeking to impugn the order dated 12.5.2016 passed by the trial court whereby the application under section 47 CPC moved by the petitioner was dismissed. The application was filed stating that the decree has become non-executable in view of various reasons including the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.
2. The relevant facts are that way back on 28.6.1887 the Lieutenant Governor, Punjab issued a Notification for acquisition of land for the purpose of construction of Bunds (Embankments) at the head of the Agra Canal under section 6 of the old Act of 1870. Notifications to the said effect for contiguous land were issued.

3. The State of UP respondent No.1 in 1975 filed a suit stating to be owner of land bearing Khasra No.68 in Khewat No.108, Khatauni No.303 in Village Okhla. It was stated that on 17.8.1971 the petitioner put up a barbed wire fencing on 4 bigha and 4 biswas of land in Khasra No.68. The petitioner also instituted a suit against the officers of the Okhla Canal to restrain them from interfering in the possession of the petitioner and status quo order was passed in favour of the petitioner. Later on the petitioner withdrew the said suit with liberty to file a fresh one on the same cause of action. A subsequent suit was filed by the petitioner.

4. The petitioner in the said suit filed by respondent No.1 filed a written statement where it was stated that the petitioner is in possession of the land for the last 70 years. The land was said to be adjacent to the abadi of village Okhla and that the petitioner/forefathers have been using the land as gher/ghitwar for tethering cattle, storing manures etc. and for that purpose super-structure etc. were raised. Hence, it was claimed that the possession of the petitioner has been open, peaceful, continuous, without any interruption and that the petitioner has acquired ownership rights by way of adverse possession. The trial court by its judgment dated 31.3.1982 decreed the suit in favour of respondent No.1 holding that the petitioner has not challenged the ownership of respondent No.1 before the court and hence the respondent No.1 is the owner of the land in dispute. A decree was passed in favour of respondent No.1 for recovery of possession of the land in dispute.

5. The petitioner thereafter filed a Regular First Appeal before this court which was dismissed on 15.4.2005. The Division Bench of this court held that the core question raised was as to whether the possession of the petitioner in the suit fructified into ownership of land by virtue of section 27

of the Limitation Act i.e. adverse possession. The plea of the petitioner of adverse possession was rejected. It was held that the possession of the petitioner was at best permissive and the appeal was dismissed. Against the said judgment, the petitioner filed a Special Leave Petition before the Supreme Court which was also dismissed on 5.9.2005.

6. Now to stall the execution, the petitioner has filed the present application under section 47 of CPC. The trial court noted the submissions of the petitioner i.e. that the decree has become unexecutable as the property has been acquired by Government of NCT of Delhi in 2001 and hence State of UP is left with no right, title or interest. No steps have been taken for substitution of the decree holder. The trial court noted that the submission is misconceived as as per record an application under Order 21 Rule 16 CPC has been filed with the submission that the property has been transferred in the name of respondent No.2 i.e. the Delhi Metro Rail Corporation. The trial court also noted the submissions of the petitioner regarding his rights under the Right to Fair Compensation and Transparency in Land Acquisition Re-Settlement Act 2013 and the claim that compensation has not been deposited in the account of the beneficiaries and hence the acquisition is deemed to have lapsed. This plea was rejected and the application of the petitioner was dismissed.

7. Before this court the learned counsel for the petitioner has reiterated his submissions. He claims that the original owner, namely, State of UP has ceased to be the owner and hence the decree cannot be executed. He also relied upon the new Acquisition Act of 2013 to claim that no compensation has been deposited in the accounts of the petitioner and hence the acquisition proceedings have lapsed.

8. In my opinion, the present objections are nothing but a dilatory tactic to stall the execution and to prevent the logical culmination of the proceedings commenced by respondent No.1 way back in 1971. A decree was passed in favour of respondent No.1 on 31.3.1982. Regular First Appeal was dismissed on 15.4.2005 and an SLP immediately thereafter. The petitioner cannot be permitted to stall the proceedings.

9. Learned counsel appearing for the State of UP has submitted that they have no objection to the present proceedings inasmuch as the land now stands transferred to DMRC.

10. There is no merit in the contention of the petitioner about State of UP ceasing to have any rights in the property and the decree having become infructuous. Even as per the trial court appropriate application under Order 21 Rule 16 CPC has already been allowed with permission to DMRC to pursue the Execution Petition.

11. Regarding the claim of the petitioner that they have not received compensation and the land acquisition proceedings have lapsed. This is an averment clearly made in the air. The acquisition proceedings are of the year 1887. Now, after about 125 years the petitioner cannot make this claim. The present petition is entirely motivated and mischievous. Same is dismissed with costs. All pending applications, if any, also stand disposed of.

(JAYANT NATH)
JUDGE

AUGUST 11, 2016/n
Signed on 15.12.2016