

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

+ **LA.APP. No. 254/2016**

% **23rd September, 2016**

RAJESH KUMAR & ANR. Appellants

Through: Mr. L.B. Rai, Advocate.

versus

GAON SABHA, MUNDKA & ANR. Respondents

Through: Ms. Jyoti Singh, Advocate for Mr. Yeeshu Jain, Advocate for UOI/R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

LA. APP. No.254/2016 and C.M. Appl. Nos. 35130/2016 (for stay under Section 151 CPC), 35131/2016 (for exemption)

1. This first appeal under Section 54 of the Land Acquisition Act, 1894 is filed by the appellants against the impugned Judgment of the Trial Court dated 1.8.2016 dismissing their claim petition for compensation, and who were I.P. no. 2 in the trial court proceedings. The proceedings in the trial court were reference proceedings under Sections 30/31 of the Land Acquisition Act for distribution of compensation.

2. The disputes in the present case pertain to the title of 10 biswas of land, 5 biswas in Khasra no. 841//1/1 and 5 biswas in Khasra no. 651//21 of Village Mundka, Delhi. The compensation amount is Rs.2,50,994/-.

3. The issue before the trial court was as to whether the appellants/I.P. no. 2 or their predecessor had any title or possession of the suit land. This was held against the appellants in terms of the discussions contained in paragraphs 12 to 16 of the judgment of the trial court which read as under:-

“12. In support of its claim, from the side of IP No. 1 Gaon Sabha Sh. Balbir Singh, Ld. Counsel tendered in evidence the copies of Khata Khatoni in respect of the land in question as Ex. IP1/D/1 and Ex. IP1/D/2. As per statement of Sh. Balbir Singh, Counsel for the IP No.1, evidence of IP No.1 was closed on 16.05.2016.

13. IP No. 2 Sh. Rajesh Kumar got himself examined as IP2W1 and tendered his affidavit in evidence as Ex. IP2W-1/X and proved on record copy of titled documents in favour of IP No. 2 as Ex. IP2W1/1 (colly); photographs of the land in question as Ex. IP2W1/2 (colly) and complaint dated 09.12.2007 made to SHO, PS Nangloi as Ex. IP2W1/3. As per statement of Sh. D.S. Lakra, Counsel for the IP no.2 evidence of IP No. 2 was closed on 08.10.2015.

14. I have heard Sh. Balbir Singh, Ld. Counsel for IP No.1/Gaon Sabha and Sh. D.S. Lakra, Ld. Counsel for IP no.2 and perused the record. My findings on issues are as under:

15. The Collector has referred the present dispute as Sh. Rajesh Kumar and Sh. Sunil Kumar IP No.2 raised the objection of the release of the compensation of the acquired land in question to Gaon Sabha who as per record is the rightful owner. The Gaon Sabha proved the Khata Khatoni Ex. IP1/D/1 and Ex. IP1/D2. Accordingly to which Gaon Sabha is the Khataidar of the acquired land in question.

16. On the other hand IP No. 2 relied on a Power of Attorney in their favour executed by one Sh. Dinesh Kumar Bhardwaj dated 08.10.2003. The IP No. 2 have not acted upon the alleged transaction. No document proved on record how Sh. Dinesh Kumar Bhardwaj was rightful owner of the acquired land in question as no Revenue record in this regard proved on record. The IP No. 2 further relied on photographs of the alleged acquired land in question, however, no negatives have been produced to prove the photographs and there is no proper demarcation by any revenue department regarding the alleged

Khasra numbers written on the photographs. No revenue record produced in support of the rightful ownership of the land in question by IP No. 2. Hence in my opinion, IP No. 2 failed to establish their rightful ownership and possession of the acquired land, therefore, the issue no. 1 is decided in favour of IP No. 1 and against IP No.2.” (underlining added)

4. A reading of the aforesaid paragraphs shows that respondent no.1/Gaon Sabha/IP no. 1 proved its claim as Khata Khatauni in respect of the subject land was in the name of respondent no.1/I.P. no. 1. Khata Khatauni was proved and exhibited as Ex.IP1/D/1 and Ex.IP1/D/2. In my opinion, this Khata Khatauni is enough to show both the ownership and possession of the subject land of I.P. no.1/respondent no.1, inasmuch as, the Khata Khatauni shows the title in the name of respondent no. 1 and since the subject property is only an open land, possession will naturally follow title and therefore possession would be of respondent no.1/I.P. no. 1. Once the revenue record showed ownership and possession of respondent no.1/I.P. no.1, then, there was no additional requirement to show how land vested in respondent no.1 as per proceedings under Section 81 of the Delhi Land Reforms Act, 1954 in the facts of the present case where appellants have miserably failed to prove how title of suit land vested with their predecessor Sh. Dinesh Kumar Bhardwaj and as stated hereinafter.

5. Trial court has also rightly held that no documents whatsoever have been filed by the appellants/I.P. no.2 to show vesting of title in the alleged

predecessor-in-interest of the appellants, namely, one Sh. Dinesh Kumar Bhardwaj, and therefore, there is no entitlement of the appellants to compensation of the suit land. Also, photographs of land in question proved by appellants as IP2W1/2 (colly.) cannot in any manner help the appellants because once the property is an open piece of land, merely by photographs appellants cannot clinch the issue of possession, because, admittedly the possession of neither the appellants nor of the alleged predecessor-in-interest of the appellants, namely, Sh. Dinesh Kumar Bhardwaj is in any manner shown to have been recorded in the revenue records.

6. Learned counsel for the appellants placed reliance upon the judgment of the Division Bench of this Court in the case of ***Ratan Singh (deceased) through LRs and Ors. Vs. Union of India and Ors., (1993) 51 DLT 7 (DB)*** to argue that persons who are in possession should be given compensation in a particular ratio as stated in this judgment, and to which proposition of law there is no dispute, however, appellants have failed to show either title or possession of the subject land for they being entitled to the share in the compensation.

7. The appeal is therefore without merits and is thus dismissed leaving the parties to bear their own costs.

SEPTEMBER 23, 2016

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VALMIKI J. MEHTA, J