

\$~R-7 & 8

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

Decided on: 03.07.2017

+ **W.P.(C) 407/2012, C.M. APPL.25579/2015 & 25580/2015**

M/S. GREY SHAM AND CO. AND ANR. Petitioners

versus

UOI AND ORS. Respondents

+ **W.P.(C) 4432/2015, C.M. APPL.8048/2015**

SALONI MEHROTRA AND ANR. Petitioners

versus

GNCTD AND ORS. Respondents

Through : Sh. B.S. Maan, Sh. Vishal Maan and Sh. Paritosh Tomar, Advocates, for petitioner, in Item No.8.

Ms. Mini Pushkarna, Standing Counsel, North DMC with Ms. Vasundhara Nayyar, Advocate, in Item Nos. 7 and 8.

Sh. Sanjay Kumar Pathak, Ms. K. Kaomudi Kiran Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD, in Item No.8.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. This common judgment will dispose of two writ petitions. The claim in W.P.(C) 407/2012 is for a direction that the acquisition of land, being No.XII/7249, 1/1, Roop Nagar, (measuring 10951 square yards) which was the subject matter of acquisition through notification dated 31.07.1968 and a further declaration in 1970, should be deemed to have been denotified under Section 48 of the Land Acquisition Act, 1894 (hereafter called “the old Act”).

2. The relief claimed in W.P.(C) 4432/2015 is that since the said property (hereafter referred to as “the suit land”) was not taken possession of by the respondents, the acquisition is deemed to have lapsed under Section 24(2) of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*. (hereafter called “the new Act”).

3. The admitted facts are that the suit lands were recovered by a notification under Section 4 of the old Act on 31.07.1968; they were also part of the declaration passed on 09.09.1970. After inviting claims from interested owners, including the land owners, represented in these proceedings by late Mohan Singh and Govind Singh, sons of late Man Singh, on 02.09.1972, the Land Acquisition Collector (LAC) published his award. The petitioners admit that compensation was paid to them pursuant to the award. The land acquisition proceedings were challenged before this Court in W.P.(C) 3876/1990. At that stage, the challenge was that in view of the observations made in the award that the petitioners ought to be provided alternative land, a direction should be issued to that effect. The petitioners also relied upon a resolution of the requisitioning body, i.e. the Municipal Corporation of Delhi (MCD) which at that stage, when it proposed

acquisition, had also claimed that it needed the lands for the purpose of a school. W.P.(C) 3876/1990 was disposed of on 07.01.2010. The petitioners were directed to move the Appropriate Government for relief by way of representation that the suit lands be released from acquisition. The order of Court dated 07.01.2010 is as follows:

“W.P. (C) No.3876/1990

Learned counsel for the petitioners, on instructions from the learned counsel on record and Mr. Mohan Singh, Partner of petitioner No.1 firm and petitioner No.2 in person, submits that the petitioners seek to withdraw the writ petition with liberty to approach the competent authority under Section 48 of the Land Acquisition Act, 1894 for release of the property subject matter of acquisition in the present proceedings as according to the petitioners the original need of the beneficiary of the acquisition stands satisfied and the possession continues to be with the petitioners.

Liberty granted. The application in this behalf will be made by the petitioners within a period of thirty (30) days from today and no action would be taken to dispossess the petitioners till that application is decided by the competent authority and for a period of fifteen (15) days after the communication of the decision to the petitioners in case of an adverse decision.

However, if the petitioners fail to file any application within a period of thirty (30) days, the stay would stand vacated. We would expect the competent authority to take a decision on the application of the petitioners within a period of four (4) months from the date of receipt of the application.

The petition stands dismissed as withdrawn in the aforesaid terms.

Dasti to learned counsels for the parties.”

4. Acting upon the liberty, the petition was made for denotification of the said land under Section 4. The petitioners were notified about the rejection of this representation, on 09.12.2011 even though the application was rejected on 23.07.2010. The rejection so indicated reads as follows:

“I am directed to inform you that your request for the de-notification of land mentioned in the above subject was considered by the De-notification Committee in its meeting held on 20.05.2010 and the same was not recommended. The non-recommendation of your case by the De-notification Committee has been approved by the Competent Authority, i.e. Lt. Governor on 23.7.10.”

5. Aggrieved by the rejection, W.P.(C) 407/2012 was moved. In sum, in this petition (hereafter referred to as “the first petition”) the claim is that the rejection was arbitrary and that the respondents should be directed to withdraw from acquisition. The petitioners have relied upon the averments made in the present proceedings as well as in the previous proceedings as also on the order made in the course of these proceedings. During the pendency of the first proceeding, the new Act came into force with effect from 01.01.2014. This triggered a fresh round of litigation, being W.P.(C) 4432/2015 (hereafter called the “second petition”). Here, the petitioners alleged that since the possession of the suit lands was not actually taken by the respondents, i.e. the GNCTD, Section 24(2) of the new Act operates and that the acquisition itself is deemed to have lapsed. In support of the submissions with respect to lapsing of acquisition proceedings, it is pointed out that consistently in all the previous proceedings, leading upto the second petition, the respondents’ position was that they had taken only a symbolic possession and actual possession of the suit lands was not taken in 1972. The

writ petitioners rely upon the interim orders made – both at the first instance after the filing of W.P.(C) 3876/1990 as well as W.P.(C) 407/2012, and especially rely upon the order dated 07.10.2012. Sh. B.S. Maan, learned counsel emphasizes that these orders were made in the presence of parties, especially the GNCTD. Reliance is also placed upon the counter affidavit filed in W.P.(C) 407/2012. It is to the following effect:

“4. That the land belonging to the petitioner firm bearing No.XII(7249)/1/1 Roop Nagar Delhi admeasuring 10951.05 was notified for acquisition under Section 4 of the Land Acquisition Act on 31.07.1968. A declaration was issued on 09.09.1970 for construction of Municipal School. The symbolic possession of the land in question was taken by drawing possession memo and handed over to MCD.”

6. It is consequently highlighted that after W.P.(C) 3876/1990 was withdrawn and the petitioners approached the Lieutenant Governor for action under Section 48 of the old Act, the GNCTD never stated that the relief claimed was inadmissible as the land had vested in it since possession was taken. This is highlighted with reference to the minutes of the meeting that resulted in the rejection of the petitioners’ representation for denotification. Urging that these minutes nowhere state that – unlike in other cases that possession had been taken, the respondents submitted that they were estopped by the record from contending to the contrary.

7. In addition to these submissions, the petitioners also urge that the suit lands have been built upon – a fact recognized in the award itself. This, urged learned counsel, impelled the LAC to notice that the MCD, i.e. the requisitioning body ought to provide alternative land. Learned counsel also relied upon the resolution of MCD in this regard dated 07.06.1966 and

submitted that in the absence of any action on this, the acquisitions did not fructify and in fact lands continued to remain with the petitioners.

8. The respondents - GNCTD in their counter affidavit rely principally upon the proceedings of possession dated 22.12.1972. It is urged here that notwithstanding the nature of the pleading which seem to suggest that mere symbolic possession was taken, the fact remains on record that physical possession of the lands was taken and witnessed by both Govind Singh, and Man Singh, the father of Mohan Singh and Govind Singh, as well as one of the petitioners. These too were partners of *Greysam and Company* which is the first petitioner in the W.P.(C) 407/2012. The GNCTD furthermore submits that the position of the first petitioner in W.P.(C) 407/2012 in respect of said concerned land is also that it was in effect a licensee of the MCD and admitted as such in response to the notice by the MCD, involving deposit of arrears of damages for unauthorized occupation of a portion of the suit property. It is submitted that in this light, the submission of the petitioners that they have been in the continuous possession of the suit lands and that they were never displaced bears out from the record.

9. It is evident from the above narrative that the first petition seeks a direction for denotification and the second proceeds on the footing that the land acquisition proceedings have lapsed. So far as the first claim in the first proceeding is concerned, the GNCTD relies upon the detailed minutes of the denotification committee meeting of 25.02.2010. A look at that document will show that *Greysam and Company's* application in respect of the suit property too was considered. The Committee decided not to recommend denotification because the officers of the MCD, "*contended that this piece of land is required for establishment of a primary school which will be a feeder*

school for the existing sr. secondary school in the area.” The petitioners’ endeavor was to submit that there was already an existing school and that it was entitled to alternative land in lieu of acquired land and that consequently, a direction for denotification under Section 48 has to be made. It is consequently urged to acknowledge the claim in W.P.(C) 4432/2015 that in fact actual possession was never taken because if that were the case, the application under Section 48 would not have been maintainable.

10. As far as the claim for denotification is concerned, the Court notices that there is no authority in law to suggest that a citizen who has received compensation and whose lands have been notified for acquisition had a vested right to claim denotification. Whether to leave from acquisition or not is a matter which lies within the exclusive domain of the authority. *Sans* successful plea of discrimination or utterly arbitrary approach to the request for denotification, the public nature of the process itself would preclude the right to claim denotification. In short, judicial review would be confined to mere considering whether reasons for declining denotification can withstand scrutiny. It would be well to recollect that without establishing illegality, procedural irregularity or lack of *bona fides*, in the absence of a legal right, an order – statutory or executive, cannot be set aside or characterized as arbitrary. The reasons given by the GNCTD to reject the denotification application cannot be said to be arbitrary, particularly, because the MCD went on to say that the primary school should be established, which would cater as a feeder to the existing senior secondary school in the area.

11. As far as the petitioners’ submission with respect to allotment of alternative land is concerned, no doubt, there are observations to that effect in law. At the same time, the Court notices that the LAC whose primary

responsibility is to determine compensation payable did not premise the recommendations of alternative land upon any existing policy. He rather based it upon the fact that the properties were built-up and also relied upon the MCD resolution. Here again, as far as the MCD is concerned, whilst its resolution cannot be disputed whether it actually paid for any alternative land or has any alternative land is not established. In these circumstances, the claim to alternative land in the absence of a clearly enunciated policy spelling out eligibility conditions and a class of land owners, whose properties are acquired, the Court cannot issue a direction to grant alternative land. That brings the Court to a discussion on the applicability of Section 24(2) of the new Act. By several judgments, it has been established that by virtue of Section 24(2) where acquisition of land has been notified but the process has not been completed, i.e. in the sense that either possession is not taken or compensation not paid within five years, whether awards are made more than five years prior to coming into force of the new Act or whether either possession is not taken of the suit land or compensation not paid within the said five year period, the acquisition is deemed to have lapsed. Now in the present case, there is no dispute that the award was made on 02.09.1972. As far as possession is concerned, again, the petitioners did not dispute having received compensation in 1972-73. The only question which survives consideration is whether possession was taken or not. Here, the petitioners emphasise upon previous proceedings - in terms of the interim order permitting withdrawal dated 07.01.2010; the initial interim order made in W.P.(C) 407/2012 and the plea of the GNCTD in W.P.(C) 407/2012. It is submitted that cumulatively all these establish that compensation within the meaning of law or at least physical possession was never taken. Much

emphasis or stress is laid upon the expression “symbolic” used in para 4 of the GNCTD’s affidavit in W.P.(C) 407/2012.

12. The GNCTD counters this argument with the compensation proceedings of 22.12.1972 and the translated copies – the copies of which have been produced in these proceedings. Significantly, this document was not produced or even relied upon in any of the previous writ petitions – W.P.(C) 3876/1990 and W.P.(C) 407/2012. The petitioners too were aware of these proceedings. The document inter alia reads as follows:

“Possession proceeding in respect of property No.XII/7249 acquired by Award No.28/72-73.

Today on 22/12/72, M/s. Shri Ram Phal Kanoongo along with Ved Singh patwari reached at site of the property No.XII/7249 admeasuring 10951 sq. yards acquired vide Award No.28-72-73 for possession proceedings. M/s Chaman Lal, Kanoongo and Ram Kavar, Patwari were found present at the site on behalf of Municipal Corporation of Delhi. On behalf of owner M/s Girdhari Lal Karan Singh, Shri Man Singh Karta and on behalf of Greysam Company, Shri Govind Singh, Partner were found present at site. Nobody was present at the site on behalf of occupiers on behalf of occupiers at the time of possession proceedings. After taking measurement of this property and after moving the representative of Municipal Corporation of Delhi Shri Chaman Lal Kanoongo around in and outside the property No.XII/7249 measuring 10951 sq. yards along with sper structure and after taking possession, the proprietary possession was handed over to Sh. Chaman Lal Kanoongo. There are twenty-four (24) trees in this property for which compensation has been assessed by the award. There possession was also handed over to Shri Chaman Lal Kannoongo. This possession proceeding was announced in loud voice by beat of drum by Shri Mohan Lal, the watchman of the property. At the time of possession proceeding no hindrance was faced. One copy of this possession proceedings was handed

over to Shri Chaman Lal, Kanoongo, Land and Estate
Department of Corporation.

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Kgo.L&E, MCD/22/12/72”

13. It is immediately evident from a reading of the above document that the possession taken of the property was in absolute terms and not subject to any conditions. Furthermore, late Sh. Man Singh and one of the petitioners, Govind Singh, were parties to these documents and had signed it. As against this, the reliance by the petitioner with respect to the admissions made in the pleadings, in the opinion of the Court, is inconsequential. It is important here to notice that for reasons best known, the GNCTD did not advert to the possession proceedings of 22.12.1972 in the sense that the documents were never part of any of the records in W.P.(C) 3876/1990 and W.P.(C) 407/2012. They have been produced for the first time in answer to W.P.(C) 4432/2015.

14. As to the effect of this documents, the Supreme Court has ruled in *DDA v. Sukhbir Singh and Ors.* AIR 2016 SC 4275 by falling upon previous judgments in *Raghubir Singh Sehrawat v. State of Haryana* 2012 (1) SCC 792 and *Banda Development Authority v. Moti Lal Agarwal* 2011 (5) SCC 394 that there is no fixed criteria or set pattern of acquiring or taking over possession of acquired lands. Quoted with approval, the observations in

Banda Development Authority (supra) visualizing five situations and at the same time stating that they are not exhaustive, in *Sukhbir Singh (supra)* itself the Court approved the mode of acquisition, i.e. recording that the officials/authorities of the Government had visited the site and recorded the taking over of possession. Having regard to this position in law, the Court is of the opinion that in the present case too, the documents relied upon, i.e. proceedings dated 22.12.1972 rule out the inference that mere symbolic possession is taken.

15. For the foregoing reasons, the Court holds that Section 24(2) of the new Act has no application to the circumstances and facts in these writ petitions. W.P.(C) 407/2012 and W.P.(C) 4432/2015 are, therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JULY 03, 2017/ajk