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

\+ LPA 399/2017

GURU NANAK VIDYA BHANDAR TRUST ..... Appellant

Through: M/s A.K.Vali & Bhaskar Vali, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL & ORS ..... Respondent

Through: M/s Arjun Mitra, Abhishek Misra & Jaskaran Kaur, Advocates for R1.
Mr. Brajesh Kumar, Advocate for R2/UOI.
Mr. Anuj Aggarwal, ASG with Ms. Deboshree Mukherjee, Advocate for R3 & R4.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% **22.05.2017**

C.M. Appln. No. 19622/2017

Exemption allowed subject to just exceptions.

LPA No. 399/2017 and C.M. Appln. No. 19621/2017

Issue notice. Counsels appear and accept notice on behalf of all the respondents. With consent, we have heard the submissions of learned counsels and proceed to dispose of the appeal.

The present LPA is filed against the order dated 08.05.2017 passed by the learned Single Judge in WP (C) No. 3925/2017. By the impugned order, the learned Single Judge has rejected the prayer made by the appellant/petitioner to waive the requirement of pre-deposit of the amount of

Rs. 87 lakhs-which is the property tax demanded by the respondent-NDMC, in view of the fact that the appellant claims to be entitled to recover, at least, Rs. 19.72 crores from the respondent-NDMC. Learned Single Judge has rejected the said prayer by observing that the two proceedings, namely, the proceeding relating to assessment of the compensation under the Land Acquisition Act to which the appellant may be entitled, and the proceedings towards levy of property tax are different proceedings, and the amount recoverable by the appellant under the Land Acquisition Act cannot be adjusted against the property tax payable by the appellant.

Brief background of the relevant facts may be narrated.

It appears that a part of the appellant's property bearing No. 9, Out Room, Jantar Mantar Road was demolished and taken possession of by the respondents in the year 1976 during the proclamation of emergency. No compensation was paid to the petitioner in that respect. The petitioner had preferred Writ Petition (C) No. 729/2008 in relation to its grievances. In those proceedings, a consent order was passed on 08.05.2009 in relation to payment of compensation to the petitioner by the respondents for their property taken over by the respondent without complying with the law. It was agreed that the compensation for the land would be determined in terms of the decision taken by the Government of NCT of Delhi - as contained in para 7 of the affidavit filed by the LAC (affirmed on 05.05.2009), "*especially taking into consideration the circle rate which has proximity to the date of notification*". The fresh estimated compensation, subject to final determination, was liable to be paid within a period of one month from the date of the order. The proceedings relating to determination of final compensation were required to be completed within a maximum period of four months from the date of the order.

It appears that the circle rate on the relevant date was Rs. 43,000/- per square meter. On the basis of the said circle rate, the amount tentatively assessed came to Rs.19,71,74,712/- after granting adjustment of the amount already deposited @ Rs.20,000/- per sq. meter. The learned ADJ attached the bank account of the LAC for the said amount. In this regard, the petitioner has placed on record the order dated 28.02.2017 passed by the learned Additional District Judge which reads as under:

> *"Perusal of the record reveals that vide order dated 26.12.2016, LAC has been directed to deposit the amount @ Rs.43,000/- per sq. meter in compliance of the directions passed by the Hon'ble High Court. No such amount is deposited. Though the amount @ Rs.20,000/- per sq. meter is already deposited and the balance amount @ RS.23,000/- is not deposited by the LAC despite directions. As submitted by the Counsel for the L&DO, one application is pending for recording his presence in the order dated 26.12.2016. Accordingly, application is allowed and disposed off and his presence is considered to be recorded for 26th December, 2016. As prayed by the Counsel for the IP No. 1 i.e. Guru Nanak Vidya Bhandar as the LAC has failed to ensure the compliance of order passed by this court, this court has left with no option except to attach the bank account of the LAC, New Delhi i.e. account No. 10945761263, State Bank of India, Tis Hazari Branch, Delhi. Assistant General Manager concerned of the SBI, Tis Hazari Branch, Delhi is directed to attach the aforesaid account of LAC, New Delhi, equal to the amount of Rs.19,71,74,712/- (Nineteen crores seventy one lacs seventy four thousand seven hundred and twelve only) calculated upto 26th June, 2014. This amount will be the part of enhancement, if any, under reference 18 of the Land Acquisition Act and shall be adjusted in the final compensation, subject to enhancement, if any, in Old or New Act. Copy of this order be given and also be sent to AGM, SBI, Tis Hazari*

Courts, Delhi for compliance. Show Cause notice be issued to LAC as well as to the Secretary, Revenue, NCT of Delhi, with the directions to appear in person."

On 19.04.2017, following order came to be passed by the learned Additional District Judge;

> *"Report is also received from State Bank of India, Tis Hazari Courts Branch. As per report sufficient funds are not available in the account.*
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> *As submitted by ADM, New Delhi that the beneficiary of the land is NDMC and enhanced amount is to be deposited by NDMC only as LAC is not having sufficient funds with it and as such the amount could not be deposited by LAC before this Court. He requested some time to seek instructions in this regard. It is also submitted by LAC that necessary directions be issued to the NDMC for depositing the balance amount.*
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> *It is also submitted by counsel for claimant/Guru Nanak Vidya Bhandar that the Government is having consolidated funds with it and every amount payable in a decree or judgment can be attached or recovered as provided in Article 202 of the Constitution of India.*
>
> *Heard.*
>
> *LAC is directed to take necessary steps in this regard to deposit the enhanced amount of compensation in compliance of this order.*
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> *Be put up for compliance on 22.05.2017."*

Learned counsel for the appellant points out that the matter was fixed by the learned ADJ for today, but today the learned ADJ is on leave.

From the aforesaid, it is evident that a very substantial amount is payable to the appellant on account of acquisition of the land of the appellant. Learned counsel for the appellant further points out that since the order passed by the Division Bench in the year 2009 was not complied with, the appellant had sought assessment of compensation in terms of Right to

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and the writ petition preferred in this respect had already been allowed. He points out that the compensation would, therefore, be much higher and the amount receivable by the appellant from the NDMC would be in excess of the amount of Rs. 19.72 crores - which is undisputedly payable by applying the circle rate of Rs. 43,000/- per square meter on the date of acquisition.

Learned counsel submits that the land in respect whereof the property tax demand has not been raised, is a vacant land. He submits that, on the one hand, the appellant has not been paid the compensation for the acquired land, and, on the other hand, the property tax demand has been raised. In these circumstances, the appellant was entitled to seek waiver of pre-deposit since the appellant has to receive a much larger amount from the respondent-NDMC. He submits that the liability for the acquired property squarely falls on the NDMC, since the land has been acquired for the purpose of NDMC.

Learned counsel for the NDMC submits that the appellant can raise the issue of waiver of pre-deposit before the learned ADJ, who is about to hear the appeal.

We cannot accept this submission. Since the learned Single Judge had already rejected the prayer of the appellant, learned ADJ would not be able to entertain the same, in any case.

Having heard learned counsels and keeping in view of the peculiar facts and circumstances of the present case, we are of the view that the prayer made by the appellant before the learned Single Judge was justified and should have been granted. The demand towards property tax is still not crystallised. On the other hand, the amount receivable by the appellant can safely be said to be beyond the maximum demand raised by the NDMC upon the appellant. The demand of the respondent NDMC is, therefore, clearly secured. The NDMC has not deposited the amount of over Rs.19 crores with the LAC, which is its liability. In these peculiar circumstances, in the interest of justice, we are of the view that the requirement of pre-deposit of Rs. 87 lakhs demanded by the respondent NDMC towards property tax-which itself is in dispute before the learned ADJ in appeal, is liable to be stayed since the amount payable by the appellant towards property tax appears to be well secured by the amounts receivable by the appellant from the respondent NDMC towards compensation for acquisition of its property. In the estimate of the Court, the same would be much larger than the said demand of Rs. 87 lakhs. Accordingly, we set aside the impugned order and stay the said demand during the hearing of the appellants appeal by the learned District Judge. It is, however, made clear that in case the amount of Rs. 19.72 crores, or any other amount is deposited by the NDMC with the LAC, before the same is released in favour the appellant, the amount of Rs. 87 lakhs shall be withheld towards the pre-deposit.

The LPA stands disposed of in the above terms. Dasti.

VIPIN SANGHI, J

ANU MALHOTRA, J

MAY 22, 2017
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