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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5044/2017 & CMs 21699-21700/2017

JATINDER KAUR

..... Petitioner

Through: Mr.Sumeet Sodhi, Mr.Arjun Nanda,
Advts.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Brajesh Kumar, Adv. for R-1
Mr.Sanjeev Sabharwal, Standing Counsel, DDA
with Mr.Hem Kumar, Adv. for R-2
Ms.Jyoti Taneja, Adv. for Mr.Yeeshu Jain, Adv.
for R-3-4

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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31.05.2017

CM 21700/2017

Exemption allowed subject to all just exceptions.

W.P.(C) 5044/2017 & CM 21699/2017

1. The petitioner claims declaration that the acquisition in respect of the agricultural land measuring Khasra Nos. 1206/2(1-9), 1206/3 (0-10), 1206/4 (0-9), 1207(1-19), 1213 Min (2-17), 1214 (4-16) situated in the Revenue Estate of Village Chhattarpur, Tehsil Hauz Khas (Mehrauli), New Delhi (hereinafter referred to as 'suit land') has lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter, the 'New Act').

2. The facts of the case are that Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Old Act') was issued on 25th November, 1980. This was followed by a declaration under Section 6 of the Act on 7th June, 1985. Thereafter, notices were issued to the persons interested and after considering their submissions as well as other relevant documents, Land Acquisition Collector published an Award on 5th June, 1987. Apparently, the suit lands and the other lands, which were subjected to the said acquisition process were challenged. This resulted in a declaration, by the Division Bench of this Court, in the judgment reported in *B.R. Gupta vs. Union of India & Ors.* 37 (1989) DLT 150. The effect of this declaration was subsequently clarified by the Supreme Court in *Abhey Ram vs. Union of India* (1997) 5 SCC 421. The Supreme Court stated that the declaration was in effect a judgment *in persona* and not a judgment *in rem* and that only those land owners who approached this Court, secured the benefit of the quashing directions.

3. The averments in these proceedings by the petitioner disclose that after the publication of the Award in 1987, the original land owner apparently executed a General Power of Attorney. The petitioner relies upon a Deed of Assignment dated 24th April, 2017 claiming that the original land owner i.e. Mr. Ramlal Sahni and three others, assigned all their right, title and interest in respect of the suit lands to her. It is submitted that by virtue of the Assignment Deed, the petitioner has the right to maintain these proceedings.

4. These proceedings are premised on the operation of Section 24(2) of the new Act vis-a-vis suit lands. It is alleged that the compensation amounts were not received by the original land owner and since the assignee/petitioner has stepped into their shoes, they are entitled to the declaration that the acquisition lapsed; notwithstanding, the making of the Award.

5. Learned counsel for the petitioner relies upon the judgment dated 9th August, 2016 of the Supreme Court in *Delhi Development Authority vs. Sukhbir Singh & Ors.* (CA No.5811/2015), as to the interpretation of Section 24(2) of the New Act. The recent Supreme Court decision dated 4th May, 2017 in *Government of NCT of Delhi vs. Manav Dharam Trust & Anr.*, (Civil Appeal No.6112/2012) is also relied upon.

6. In *Manav Dharam Trust* (supra), the court held as follows:-

“29. Thus, the subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/land owners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondents/writ petitioners do not have any locus standi.”

7. As to the interpretation of Section 24(2), there can be no

manner of doubt. Starting from *Pune Municipal Corporation & Anr. Vs. Harak Chand Misirimal Solanki & Ors.* (2014) 3 SCC 183 and Sukhbir Singh (supra), authorities are unanimous that the effect of Section 24(2) of the New Act is that, in the absence of evidence that the compensation is tendered to land owners or in the absence of possession having been taken by the concerned acquiring authority, and if a period of 5 years has lapsed after the completion of acquisition i.e. making of the Award, the person approaching the Court could be entitled to the declaration that the acquisition has lapsed. The petitioner relies upon *Manav Dharam Trust*(supra) to say that irrespective of who owned the land at the time of acquisition, the application of Section 24(2) of the New Act being referral to land, the acquisition process is deemed to have lapsed. To this end, it is underlined that even a subsequent transferee has a right to maintain proceedings and seek declaration under Section 24(2) of the New Act.

8. The Court is of the opinion that the judgment in *Manav Dharam Trust* (supra) undoubtedly allows subsequent purchasers or transferees to maintain proceedings, yet each case has to be decided on its own peculiar facts. A close reading of that judgment would show that the Court scrutinize the provisions of the old Act as well as the new Act to discern who is a ‘person interested’ and who, is the “land owner”. In the context of the old Act, a ‘person interested’ was one who had a right to receive compensation and included one who is deemed to be interested in an easement affecting the land. The new

Act operates in a wider manner. However, there too the concept of “person interest” is premised largely upon the right of a person claiming and interested in the compensation or the right to receive it. This is clear from Section 3 (x) (i) to (v) of the new Act. It was in the context of the right to receive compensation that the Court said what it did in the extract of its decision quoted previously. In the opinion of this Court, therefore, while deciding the claims of a subsequent purchaser, what is important in writ proceedings is not merely an assertion that the original land owner did not receive compensation but also a wider scrutiny on the other materials on record. This may include but need not be confined to record of representation claiming compensation, if it is deposited by the original land owner, proximate to the making of the award and representations made thereafter, when was the land purchased etc.

9. In this, the entire basis of the claim in the petition is the Assignment Deed of 24th April, 2017. While it no doubt cites the other documents, the primary evidence, i.e. the documents themselves (GPA, agreement) are not part of the record. It is also unclear whether those documents i.e. GPA, etc, were registered.

10. The recital is noted regarding the fact that the owners did not receive compensation. On the other hand, the assignment deed records as follows:-

“2) That the Assignors do hereby convey and assign absolutely all their rights, title, interest, shares, actionable claim and claims etc. for above said land / property compensation rights, alternative land/plot, whatsoever settled

by the L.A.C. or/and if in future settled by courts or enhanced by courts in reference petition, revision, appeals, writ and SLP etc. of the same and to be filed in the court of ADJ of Delhi High Court/ Supreme Court of India. The Assignee will have all rights to receive and recover the same in favour of the Assignee from the concerned authorities/departments or courts with each and every right which vest in the name of the Assignee as towards the above said Award, alternative land etc. from the Land Acquisition Collector or from any court in reference, revisions, appeals etc. unto the Assignee.

3) That the Assignors admit that they have been left with no right, title, interest, shares or claims, etc., in the original and/or enhanced compensation amount or any rights to be settled above in the said Award or in reference, revisions or appeals, writ, SLP, etc. and the same has become the land/property of the Assignee, with the entire and absolute rights to receive and recover the same in her own name and or her nominee(s).

4) That the Assignors admit that the Assignee is fully entitled to substitute herself in references petition u/s 18 of the L.A. Act or in the decree from any court if the reference petition mentioned above' in decided hereinafter and to conduct and continue the same in any manner as she likes."

11. It is, therefore evident that this Court is called upon to undertake the exercise of determining whether the petitioner is entitled to a declaration under Section 24 (2) on the basis of the Alignment Deed. The petitioner has not filed the affidavit of the assignor/owner and documents to show, in fact, whether the consideration claimed to have been paid was paid or not. The entire basis of the proceedings is that the petitioner acquired all rights over the suit land (for which compensation was determined way back in

1987) on the basis of transaction i.e. registered document of April, 2017. The ambiguous nature of the Assignment Deed is further highlighted by the fact that the assignors also refer to the right of the assignee to substitute herself in reference (Section 18) proceedings. There is no averment in this regard in the petition. All this only emphasizes or rather highlights the fact that the assignment was not prior to and no right, title or interest passed to the petitioner at the time or immediately after making of the Award. It shows that she acquired the right to receive compensation which might be subject of reference, for enhanced compensation in *Manav Dharam Trust* (supra).

12. The Court is mindful of the fact that the wording of Section 24 (2) is categorical and may not necessarily refer to individuals rights. However, equally one cannot lose sight of the fact that there can often be situations where land owners may collect their compensation, seek a reference or their right to receive compensation may be subject to a dispute which under the Old Act was compulsorily referable under Sections 30 and 31 of the Act. In these situations, or wherever the land owner accepted the compensation and claims a reference under section 18 or goes further in an appeal, the right of the assignee would mean only the right to prosecute those proceedings for enhanced compensation under the old Act either before the reference Court or appellate Court, or the right to receive it after the decision of the dispute under Section 30/31 of the old Act.

13. For the foregoing reasons, this Court is the opinion that no relief can be granted in the present case. The petition as well as application is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAVIN CHAWLA, J

MAY 31, 2017
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