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

% Judgment delivered on: 01st May, 2017

+ **W.P.(C) 11238/2016**

THE JAG JIWAN COOPERATIVE
GROUP HOUSING SOCIETY LTD.

..... Petitioner

Through : Mr.S.S.Mishra, Advocate.

versus

LT. GOVERNOR OF DELHI & ORS

..... Respondents

Through : Mr.Tarun Sharma,
Advocate for respondent No.1.

Mr.Anil Dabas, Advocate for
respondent Nos.2 & 3.

Mr.Pawan Mathur, Advocate for
DDA.

Ms.Anju Gupta and Mr.Roshan Lal
Goel, Advs. for SDMC/respondent
Nos.7 &8.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S.RAVINDRA BHAT, J. (Oral)

1. The petitioner society has filed this petition praying for the quashing of the notifications under Section 4 and Section 6 of the Land Acquisition Act, 1894; as also the award bearing No.43/1986-87 and seeks further direction against the respondents not to interfere with or obstruct their peaceful possession over the subject land.

2. The petitioner society claims to be the absolute owner and in

possession of land measuring 32 bigha and 3 biswas (32048 square yards) comprised in Khasra No.410(30-13) and 414 (2) (1-10) situated in the revenue estate of Village Kasoompur, Tehsil Vasant Vihar, Delhi which it claims to have purchased vide agreement to sell dated 21.07.1990, receipt dated 05.06.1991, letter of possession dated 11.06.1991 and general power of attorney dated 30.10.1991 executed by the recorded owners namely Ram Kishan, Ajit Singh, Ram Chander Azad Singh, Jaswant Singh, Kinku and Shibban.

3. The subject land was a part of the notification bearing F.No.4(98)/64-L&H dated 23.01.1965 issued under Section 4 of the Act. On 06.09.1966, the notification under Section 6 of the Act was issued and then the award bearing No.43/1986-87 in respect to the subject land was passed.

4. It is alleged by the petitioner society that the land was never acquired by the respondents and it remained in its possession and as the compensation was never tendered or paid to the recorded owners or to the petitioners, the notification under Section 6 of the Act ought to be declared as having lapsed per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5. The Land Acquisition Collector (LAC) – respondent No.6 has filed its counter affidavit and its para Nos.4 & 5 being relevant are stated below:-

“4. That the present writ petition is liable to be dismissed as the petitioners are neither the

recorded owner of the subject land falling in Khasra number 410 (30-13) and 414 (1-10) total (31-03) falling in village Kasoom Pur nor the petitioner which is stated to be a CGHS have filled the registration certificate nor it has filed the list of its members and other related documents as to whether the petitioner society is still available or defunct, thus the writ petition by the petitioner is not maintainable.

5. That the present writ petition is liable to be dismissed as the notification u/s 4 of the Act, 1894 was issued on 23.01.1965 as the public purpose was for the construction of a Government School, which was followed by Award No. 43/86-87, the only challenge on the subject Khasra number vide writ petition number 1282/86 was also vanished with the dismissal of the writ petition on 27.05.1997, the actual vacant physical possession of the subject property was taken on the spot on 05.08.1997 and handed over to the DDA on the spot by preparing possession proceeding on the spot. It is pertinent to mention here that the writ petition was filed by the recorded owners and during, the pendency of the said writ petition, the recorded owners cannot enter in any 'Agreement to Sell'/ Receipt/ Possession Proceeding dated 11.6.1991 with the petitioner herein. It is reiterated that even otherwise, the actual vacant physical possession of the subject land was taken on the spot by the answering respondent and handed over to the petitioner till date. Thus, it is submitted that under section 16 of the Act, 1894, the said land vests with the Government absolutely and free from all encumbrances. The photographs filed by the petitioner also reflects that the land is not in possession of the petitioner/recorded owner but in the physical possession of the DDA as the

same is lying vacant and undeveloped. It is further submitted that having admitted that the recorded owner sold the subject land during the pendency of the said writ petition, the recorded owners were left with any interest in seeking for compensation from the office of the answering respondent and the compensation amount is lying in RD.”

6. The recorded owners earlier filed a Civil Writ Petition No.1282/1983 and within its pendency they allegedly had sold the subject land to the petitioner society. The said writ petition was dismissed on 27.05.1997.

7. Admittedly, the petitioner did not confront the respondents when the possession of the subject property was taken over at the spot on 05.08.1997 or when it was handed over to the Delhi Development Authority vide the possession proceedings. There is no challenge to the possession proceedings by the petitioner till date, hence the land now absolutely vests with the government. The photographs filed by the petitioner do not in any way reflect the subject land still in possession of the petitioner. It is settled law that once the possession of subject land is taken, its unauthorised occupation would not de-vest the government of the land. The petitioners also did not challenge the determination of the compensation pursuant to the award dated 13.09.1986. Such compensation is now lying deposited in RD.

8. As the petitioner society is not a recorded owner of the subject property and as its name does not exist in the list of claimants, given

in the subject award, so there is no way for us to find if the recorded owners were ever tendered the compensation. The petitioner's reference to the reply dated 17.08.2009 of the ADM/SW to the effect that no reference under Section 18 of the Act was filed against Khasra No.410(30-13) and 414 (2) (1-10) situated in the revenue estate of Village Kasoompur, Tehsil Vasant Vihar, Delhi or the possession of the land in aforesaid Khasra numbers has not been taken over, are disputed facts which questions cannot be dealt with in the writ.

9. Hence, there is no cogent ground for giving the declaration or directions as prayed for. The writ petition is accordingly dismissed.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

MAY 01, 2017

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