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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 08.08.2017

Judgment delivered on : 17.08.2017

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W.P.(C) 6964/2015

PRITAM LAL AHUJA

..... Petitioner

Through Mr. Kapil Kher and Ms. Harsha,
Advvs.

Versus

THE CHIEF SECRETARY, NCT OF DELHI AND ORS.

..... Respondents

Through Mr. Gautam Narayan, ASC for
GNCTD.

Mr. Arjun Pant, Adv for DDA.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The present petition had been premised on several prayers. On 15.11.2016, learned counsel for the petitioner had given up prayers 'a' and 'b'; what survived were the alternate prayers which had been reproduced in the aforementioned order and reads herein as under:-

“Issue a Writ of Mandamus/Certiorari thereby directing the respondents to hand over the vacant and peaceful possession of the plot of land measuring about 200 sq. Yards situated in Village Khizrabad, New Delhi or at any other place of equivalent value, to the petitioner

(c) Issue a Writ Mandamus thereby directing the respondents to pay

compensation to the petitioner for withholding the possession of the said plot of land during the past several years and depriving the petitioner the use of the plot of land;

(d) To issue any other appropriate writ, order or direction which the Hon'ble Court may deem fit and proper in the circumstance of the case."

2 Pleadings are complete.

3 The case of the petitioner is that in February 1955, the brother of the petitioner had purchased the land in dispute i.e. 200 sq. Yards situated in Village Khizrabad, New Delhi. This land was mutated in the name of the petitioner in July, 1969. The respondent i.e. Delhi Government had acquired this land in July, 1975. The petitioner lodged his claim for compensation in August, 1975. He was not granted compensation for the reason that the said land had not been acquired. Between 1976 to 1998, the petitioner had been vigorously following up his case with the respondent seeking a demarcation of the land with a consequent prayer that the possession of the land should be handed over to him as this land had not been acquired by the respondent. A legal notice was served upon the respondent on 19.02.1999. No reply was received. The petitioner was constrained to file a writ petition in May, 1999 (W.P.(C) No.3856/1999). In these proceedings, a fresh demarcation had been obtained from the Department; this was in view of discrepancy appearing in the earlier two demarcation reports. This demarcation report is

dated 12.03.2001. This order records that the demarcation report dated 27.10.1998 is correct and out of total 1- ½ biswas of land of the petitioner falls in the park and rest of his land falls in the adjoining road north to the park. The petitioner was present at the time when the said demarcation was carried out. The Bench of this Court had observed that what emerges was that part of the land of the petitioner had formed part of a park whereas the remaining was in the adjoining road; the respondent/NCT was not claiming any right on the land falling on the private road and it was left open to the petitioner to utilize this land. As far as the land in the park was concerned, the same had to be reverted back to the petitioner unless acquired in accordance with law. At that point of time, the respondent had made a statement that appropriate steps to acquire this portion of the land would be taken. Three months time was granted to the respondent to do the needful. The petitioner was also given liberty to take appropriate steps in accordance with law to challenge the demarcation report if he was aggrieved by the same. The relevant extract of the aforementioned order reads herein as under:-

“The position which emerges from the aforesaid is that a part of the land of the petitioner which has remained unacquired is in the park and the part of the same is in the adjoining road. The respondents did not claim any rights in respect to the portion of the land falling in the private road and it is

stated that it is open to the petitioner to utilize this land.

In so far as the land of the petitioner falling in the park is concerned, the same has to revert back to the petitioner unless it is acquired in accordance with law. Learned counsel for the respondents seeks some time to take appropriate steps for acquisition of the said land since the park is already developed. In view thereof, the respondents are granted three months time to take necessary steps for acquisition of the land in the park falling which respondents shall hand over back the possession of the portion of the land of the petitioner situated in the park.

In case the petitioner has any grievance in respect of the demarcation reports, it is open to the petitioner to take appropriate steps in accordance with law to challenge the same”

4 This writ petition was thus disposed of on 17.12.2002.

5 It has been informed to the Court (admitted position) that the land has now been acquired and that part is under the development and control of the DDA.

6 Learned counsel for the petitioner vehemently submits that the private land which has remained unacquired has not been handed over to the petitioner inspite of several letters having been written by the petitioner to the Department. On a specific query put to the learned counsel for the petitioner as to what steps he had taken after 17.12.2002, his submission is that he had sent a communication to the respondent on 27.05.2003 followed

by a contempt petition which the petitioner had been constrained to file (CCP No.435/2004) as the land of the petitioner which was a private land had still not been handed over by the respondent to the petitioner.

7 This contempt case CCP 435/2004 was disposed of by the Single Judge of this Court on 09.05.2007. The contention of the respondent was that pursuant to an Award, the portion of the petitioner's land which has fallen in the park had been acquired. This Award has been passed consequent to the earlier orders dated 17.12.2002 passed in W.P. (c) No.3856/1999. The relevant extract of the aforementioned order is reproduced herein as under:-

“As regards the portion of the land which, as noticed by this Court in its order dated 17.12.2002, falls in the private road and in regard to which the respondents did not claims any rights, the petitioner can seek to take possession of that portion after duly informing the respondents.”

8 The contempt petition had been disposed of. The Court had reiterated that the portion of land of the petitioner which falls on a private road and upon which the respondent/Government is not claiming any right, the petitioner can take possession of that portion after informing the respondent.

9 Again a query has been put to the learned counsel for the petitioner as to what action he had taken after the disposal of his contempt petition on

09.05.2007, his submission is that he has sent a letter to the respondent on 16.11.2007 seeking possession of the land followed by another letter dated 14.12.2007 and thereafter another letter was written in January, 2011. He had again been constrained to file a contempt petition (Cont. Case No.87/2011) as the directions of the Court were not being abided by.

10 The petitioner was thereafter constrained to file the present petition. This Court notes that this petition has been filed on 13.07.2015. Learned counsel for the respondent in response points out that the case of the petitioner must necessarily fail as his surviving prayers relate to the handing over of vacant and peaceful possession of the land measuring 200 sq. Yards situated in Village Khizrabad, New Delhi. This prayer has already been answered in terms of the orders passed by the Court (noted supra) wherein the Court had recorded that a portion of the land of the petitioner which was forming part of the park has since been acquired. Acquisition of this portion of the land in terms of the specific directions given by the Single Judge of this Court in W.P.(C) No.3856/1999 on 17.12.2002; the fact that this land has been acquired is an admitted fact; the fact that compensation of the same has been deposited with the LAC is also an admitted position; it was open to the petitioner to claim possession of that land.

11 Qua the balance land which the Court had noted was forming part of the private road, both the orders dated 17.12.2002 as also the subsequent order dated 09.05.2007 had granted liberty to the petitioner to take possession of that land after informing the respondent. He has availed of no such remedy. Admittedly he has not taken any civil proceedings qua the said piece of land. By filing this petition and thereafter giving up prayers 'a' and 'b' and alternate prayers also partially having been satisfied, this Court would not be in a position to return a fact finding as to how much portion of the land is a part of the private road for which the additional prayer of the petitioner is a claim for compensation. All these are fact findings.

12 This Court also notes that in the course of these proceedings, a 3rd demarcation report had been prepared and filed in the Court which was again pursuant to the directions of this Court dated 07.02.2011 (in Cont. Case (C) No.87/2011). This report is dated 09.12.2011. This report states that the Kanungo of the DDA had reached the spot; the nephew of the petitioner and villagers were also present. Permanent points were searched for the purpose of demarcation. Since there was permanent wall of houses and pucca construction having been carried out, it was not possible to carry out any demarcation. It was stated that the entire area of aforementioned Khasra

No.13/23/5/6/11 is built up with pucca houses and plot No.13/23/5/6/11 mins of the petitioner lies in that pucca construction; it was thus not possible to locate the plot of the petitioner separately. Demarcation report was submitted accordingly.

13 This report was examined while disposing of the contempt petition on 18.07.2014. The Court had again noted the contentions of the respondent that the land of the petitioner which was falling in the park has been acquired and compensation has already been deposited with the Appropriate Authority and the petitioner is free to collect the compensation from the Appropriate Authority. Qua the land which was falling on the road, since it was a private road and the respondents had nothing to do with the same, the question of the respondent handing over the possession of the same did not arise.

14 The contempt petition was disposed of in the said terms. The relevant extract of the aforementioned order reads herein as under:-

“The learned counsel for the respondents has stated that so far as the land of the petitioners falling in the park is concerned, that has already been acquired and the compensation has already been deposited with the appropriate authority. The petitioner is free to collect the compensation from the appropriate authority. As regards the land which is falling on the road, since the learned single Judge has already taken note of the fact that the road was a private road and the respondents have nothing to do with the same, therefore, there is no question of the respondents handing over the possession of the same

to the petitioners. In addition to this, the petitioners cannot file two contempt petitions on the basis of the same ground. I do not see any disobedience of the orders passed by the court, much less the same can be said to be wilful in nature inviting any action against the respondents under the Contempt of Courts Act, 1971.”

15 In view of the aforementioned orders passed by the Court, this Court is of the view that this is a clear case where the case of the petitioner must necessarily fail. Admittedly he has not taken any civil proceedings qua this portion of the land which was on the private road inspite of directions given in 2002 and thereafter in 2007 and since the respondent was not claiming any right over this portion of land, the petitioner was free to take recourse for taking possession of the same. He has only been repeatedly filing contempt petitions seeking contempt to be initiated qua the disobedience of an order dated 17.12.2002, the last of his petition was dismissed on 18.07.2014 (Cont Case No.87/2011).

16 The petitioner has clearly no case. He is just buying time before this Court.

17 Petition is without any merit. Dismissed.

INDERMEET KAUR, J

AUGUST 17, 2017/A