

\$~28

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

+ **W.P.(C) 7242/2017 & C.M. No.30005/2017 (for stay)**

DINESH KUMAR HIMATSINGKA & ANR. Petitioners
Through: Mr R. Jawahar Lal, Mr Siddharth Bawa &
Mr Shyamal Anand, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr Sanjoy Ghose, ASC, GNCTD with
Mr Rhishabh Jetley, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **06.09.2017**

VIBHU BAKHRU, J

1. The petitioner no. 1 is stated to be the owner and in possession of the property bearing Plot No.A-23, Village Satbari, Mehrauli, New Delhi situated in Khasra Nos. 710 (4-16) and 711 min (3-07) admeasuring an area of 8 bigha 3 biswa (1.69 acre) (hereinafter 'the Property').

2. It is stated that the property was the subject of acquisition under the Land Acquisition Act, 1894 (hereafter 'the 1894 Act'). The 1894 Act was repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter 'the 2013 Act'). In view of the provisions of Section 24 (2) of the 2013 Act, the

acquisition proceedings in relation to the property lapsed as, according to the petitioner, neither the award was made nor the possession of the property was acquired by the Delhi Development Authority (DDA).

3. In view of the above, the petitioner no.1 filed a writ petition [W.P. (C) No.4367/2014], *inter alia*, praying for a declaration that the acquisition proceedings under the 1984 Act in respect of the property had lapsed. The said writ petition was allowed by a Division Bench of this court by an order dated 15.12.2014. The said order was carried in appeal, however, the Supreme Court by an order dated 31.8.2016 dismissed the said appeal [Civil Appeal No.8524/2016 arising out of SLP (Civil) No.22065/2015] filed by the DDA. However, even though the said appeal was dismissed, the DDA was granted a period of one week to exercise its liberty under Section 24 (2) of the 2013 Act for initiation of fresh acquisition proceedings. The Supreme Court had also stated in unequivocal terms that if no fresh acquisition proceedings were initiated within the period of one year from that date by issuance of notification under Section 11 of the 2013 Act, the possession, if acquired, would be returned to the petitioner.

4. Petitioner No.1 desirous of gifting the said property to petitioner No.2 - who is stated to be the nephew of petitioner no. 1 - executed a gift deed dated 14.9.2016 and also paid the stamp duty of ₹15,30,000/- and registration fee of ₹2,55,100/-.

5. The petitioners' grievance is that the said gift deed is not being registered by respondent No.4 (Sub-Registrar) who is insisting on a No-Objection Certificate (NOC) under Section 8 of the Delhi Land (Restrictions

on Transfer) Act, 1972.

6. The learned counsel for the petitioner contends that there is no such requirement, as fresh acquisition proceedings have not been initiated in respect of the property.

7. It is seen that the period of one year as granted by the Supreme Court for initiation of fresh acquisition proceedings has also now lapsed.

8. Sections 4 and 8 of the Delhi Land (Restrictions on Transfer) Act, 1972 are relevant and are set out below:-

“4. Regulation on transfer of lands in relation to which acquisition proceedings have been initiated. - No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union Territory of Delhi, which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the Central Government under section 6 of the Land Acquisition Act, 1894, the Central Government has not withdrawn from the acquisition under section 48 of that Act.

XXXX

XXXX

XXXX

XXXX

8. Restrictions on registration of transfers of land.—Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of section 17 of the Registration Act, 1908, purports to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof referred to in section 4, no registering officer appointed under that Act shall register any such document unless the transferor produces before such

registering officer a permission in writing of the competent authority for such transfer.”

9. It is at once clear that there would be no requirement for obtaining a NOC as the property is not the subject-matter of any declaration for acquisition.

10. Mr Ghose, learned counsel for the respondent submits that the Land Acquisition Collector had sent a letter dated 30.8.2017 to the Vice-Chairman, DDA requesting for the status/opinion of the DDA in this regard, however, no response has been received from the DDA as yet. He further submits that the order of respondent No.4 declining to register without a NoC is an appealable order and therefore, the petitioners ought to be relegated to their statutory remedy.

11. Indisputably, respondent No.4 has to carry out its function within the confines of the statute. There is also no dispute that the condition of obtaining a NOC in case where a declaration of acquisition has not been made, is not applicable. The Delhi Land (Restrictions on Transfer) Act, 1972 neither proscribes nor restricts the registration of conveyance in respect of a property, which is not the subject of any acquisition. Thus, since the acquisition proceedings under the 1894 Act have lapsed, the condition for obtaining the permission of a competent authority - as required under section 8 read with section 4 of the Delhi Land (Restrictions on Transfer) Act, 1972 - for registering the property is no longer applicable. Further, no material has been put before this Court, which would persuade this court to accept that there is any doubt as to the petitioners’ right to insist on

registration of the gift deed.

12. In the circumstances, the impugned order dated 29.3.2017 passed by respondent No.4 declining to register the document under Section 71 of the Registration Act, 1908 read with Section 8 of the Delhi Land (Restrictions on Transfer) Act, 1972 is plainly unsustainable.

13. The impugned order is accordingly set aside. Respondent No.4 is directed to register the gift deed in question, if otherwise permissible under law.

14. It is clarified that this court has limited the examination in the present writ petition only to the question whether registration of the gift deed could be rejected for want of NOC under Section 8 of the Delhi Land (Restrictions on Transfer) Act, 1972.

15. It is further directed that if the petitioner applies for registration of the gift deed in question within a week from today, the respondent No.4 shall register the gift deed or pass a reasoned order for not doing so, within a period of four weeks thereafter.

16. Order *dasti*.

VIBHU BAKHRU, J.

SEPTEMBER 06, 2017
‘AA’