

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

% **Date of decision: 23rd July, 2018**

+ **LA.APP. 103/2017, CM No.9631/2017 (u/S 151 CPC for stay)**

SUMIT MODI

..... Appellant

Through: Mr.Manish Vats, Advocate

Versus

UOI & ANR

..... Respondents

Through: Mr.Pawan Kumar Gangwal,
Adv. for Mr.Pramod Kumar,
Adv. for R2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 54 of the Land Acquisition Act, 1894 impugns the judgment [dated 11th November, 2016 in LAC No.20A/13 (new No.83/16) of the Court of Additional District Judge-02, West, Delhi] in a Reference under Section 30-31 of the Act apportioning the compensation for acquisition of land measuring 1 bigha 10 biswas in Khasra No.64/16 (1-10) of village Mundka equally between the appellant and the respondent No.2/ Gram Sabha, Mundka.

2. The appeal came up before this Court first on 10th March, 2017 when notice thereof was ordered to be issued and trial court record requisitioned. A counter affidavit has been filed by the respondent No.2 and to which a rejoinder has been filed by the appellant. The counsel for the appellant has been heard and the trial court record requisitioned perused.

3. Mr. Pawan Kumar Gangwal, advocate appears and states that he does not know anything about the case and he is appearing as a proxy

for Mr.Pramod Kumar, advocate for Gram Sabha, Mundka who has chosen not to appear. The appearance of Mr.Gangwal is no appearance in law and Mr.Pramod Kumar, advocate having chosen not to appear inspite of having accepted the panel, cannot be awaited any further.

4. The admitted position is:

- (i) the land aforesaid has been proved by the Kanoongo to be recorded in the name of one Vijay Kumar;
- (ii) the appellant, inspite of purchase, did not get the land mutated in the revenue records in his favour;
- (iii) the Office Kanoongo aforesaid also proved that the land aforesaid stood vested in the name of Gram Sabha under Section 81 of the Delhi Land Reforms Act, 1954; and,
- (iv) at the time of acquisition in the year 2005-06, the land was in the name of respondent No.2/Gram Sabha and possession of the land in pursuance to acquisition was taken in the year 2007 from the Gram Sabha.

5. The counsel for the appellant, on enquiry as to why the appellant, inspite of purchase, did not get the land mutated in his favour, states that the appellant is a layman. However, on further enquiry as to why a layman was purchasing agricultural land, no answer is forthcoming.

6. The case of the appellant before the Reference Court also was that he was neither aware of proceedings under Section 81 of the Delhi Land Reforms Act with respect to the land nor aware of the acquisition of the land.

7. The only argument of the counsel for the appellant is that the respondent No.2/Gram Sabha, along with its counter affidavit to the appeal, has filed khasra girdawari showing the land to be still in possession of the Gram Sabha and therefrom it is evident that the entries in the revenue record are unreliable. It is argued that the appellant was in possession of the land and possession, pursuant to acquisition, was taken from him.

8. However, neither any document to show that possession, at the time of acquisition, was taken from the appellant was proved before the Reference Court nor is any produced before this Court and only an argument to the said effect is being made. In fact, the counter affidavit on the record of this Court is not even accompanied with any annexures, though para 3 thereof states that khatoni of the year 2005-06 and 2015-16 was being annexed thereto. The counsel for the appellant states that copies of the annexures were however supplied to him.

9. A perusal of the Reference Court file shows the appellant to have, in his cross-examination, stated that he had not received any notice from Land Acquisition Collector before acquisition of land in question though he was aware of the acquisition notification. He further deposed that he was not supposed to verify the revenue record of the land in question and he had no proof of being in possession of the land except the sale deed. The other witness examined by the appellant, i.e. Kanoongo also admitted that the land was shown in the khata of Gram Sabha and no other person had any title over the land in question.

10. In the aforesaid state of affairs, it is felt that the appellant is lucky that the Reference Court has awarded 50% of the compensation for acquisition of the land to be paid to the appellant inasmuch as the rights in the land are on the basis of mutation in revenue records of the land and the appellant having allowed the land to stand in the name of the Gram Sabha for over ten years prior to the acquisition of the land and the land at the time of acquisition being recorded in the name of the Gram Sabha, the appellant could not have laid any claim for compensation. Rather, it is inexplicable as to why the Gram Sabha, Mundka has not filed any appeal against the order (the counsel for the appellant states that no appeal has been filed and Mr.Gangwal, advocate appearing for the respondent has no knowledge).

11. There is thus no merit in the appeal.

12. Dismissed.

RAJIV SAHAI ENDLAW, J.

JULY 23, 2018

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