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

% *Date of Judgment: 21st May, 2018*

+ W.P.(C) 9609/2015

MANSOOR AZAM

..... Petitioner

Through: Mr. Arvind Sah and Mohd. Anis-ur-Rehman, Advocates

versus

GOVT. OF NCT OF DELHI & ORS

.... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for L&B/LAC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Pleadings are complete. With the consent of the parties, the writ petition is set down for final hearing and disposal.
2. This is a petition under Article 226 of the Constitution of India filed by the petitioner.
3. The necessary facts to be noticed for disposal of this writ petition are that the petitioner claims that his ancestors were the original residents of village Okhla, Delhi and were owners of ancestral agricultural land. It is also claimed that Mr. Abdul Alim S/o Late Shri Abdul Hameed @ Abdul Mujeeb (great grandfather of the petitioner) was in possession as a cultivator of the land comprised in Khasra no.125(1 bigha 5

biswa) at village Okhla, New Delhi. It is also claimed that the name of Abdul Alim is still reflected in the revenue records maintained by the respondents as a cultivator and in possession. The cultivatory rights of the land in question were purchased by Abdul Alim from one Mr. Niyader and the available revenue record from around 1947-48 onwards records the name of Abdul Alim as a buyer and the name of Mr. Niyadar as the seller. Copies of Jamabandi for the years 1947-48, 1960-61 and 1998-99 have been filed along with the writ petition. Also, copies of Khasra Girdawari for years 1973 to 1977, 2005 to 2009 and 2013 to 2015 have also been placed on record. It is also the case of the petitioner that Shri Abdul Alim expired on 03.09.1961 and prior to his death, he had made an oral Gift/Hiba as prescribed under the Mohammedan Law and the cultivatory rights of the said land bearing Khasra no. 125(1 bigha 5 biswa) at village Okhla, New Delhi to his grand-son Abdul Hannan, father of the petitioner.

4. It is the case of the petitioner that a Deed of Declaration dated 24.01.2014 was also executed by the witnesses of the oral Gift/Hiba bequeathed by Shri Abdul Alim in favour of his grand-son Abdul Hanan. A copy of such a Deed of Declaration has been placed on record to claim ownership over the land. The petitioner relies upon the Jamabandi for the year 1947-48, which records Abdul Alim as cultivator and in possession over the land and other revenue records, including the Declaration confirming Hiba dated 24.01.2014. It is also the stand of the petitioner that Mr. Abdul Hanan enjoyed the physical possession of the said land as a cultivator till the possession was taken

over for purposes of construction of Janakpuri West-Botanical Garden, MRTS Project, Phase-III, Delhi.

5. A Section 4 notification of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 09.05.2013 followed by a notice dated 20.05.2013 under Section 16 and 17 of the Act. The land of the petitioner was acquired for purposes of constructing of the pillar by Delhi Metro Rail Corporation (DMRC).
6. The complaint of the petitioner is that although he filed a claim petition under Sections 9 and 10 of the Act claiming to be the rightful owner of the land and further although a notice was issued to the petitioner on 20.02.2014, to which the petitioner replied on 28.02.2014, the compensation pertaining to the land was tendered to some third persons, who have no title, right or interest over the said land. It is also the case of the petitioner that from the year 2014 till date, the objections of the petitioner remain undecided.
7. Mr. Sah, learned counsel appearing on behalf of the petitioner seeks a direction to the Collector to decide the objections of the petitioner expeditiously and tender the compensation to the petitioner.
8. Counter affidavit has been filed by the LAC. Reliance is placed on paragraph 4 of the counter affidavit, which we reproduce below:

“4. That the present writ petition is liable to be dismissed as the petitioner is claiming the compensation of the land measuring (1-05) in khasra number 125 whereas the revenue record reflects the names of various recorded co-owners having different Nooru 1/2 share, Kedar 1/10th share, Babu 1/10th share, Ahmed 1/10th share, Ms. Nazaria 1/10th share, Jaitun 1/10th share respectively. The present writ petition is liable to be dismissed as in para 4 of the writ petition, the

petitioner alleged that his forefather namely Abdul Alim was in cultivator position and purchased cultivator rights from Niyadar however there is nothing on record to substantiate the said claim of the petitioner besides the fact that the legal heirs of Niyadar having 1/10th share each were duly recorded/ mutated in the revenue record which mutation was never challenged by the petitioner. The writ petition is further liable to be dismissed as the petitioner is alleging that Mr. Abdul Alim orally gifted the cultivator rights in the said land to the father of the petitioner prior to his death as Abdul Alim expired on 3.9.1961. The petitioner has not disclosed the date of alleged oral gift deed to his father nor his father preferred to get the same mutated in revenue record though he remained alive till 1.5.2013.”

9. Counsel for the LAC submits that since the name of the petitioner does not find mentioned in the Naksha Muntazamin, the compensation was granted to the original owner and no relief should be granted to the petitioner. It is further contended that the name of the petitioner has not been mutated in the revenue record since the year 1960.
10. We have heard the learned counsels for the parties and considered their rival submissions.
11. The basic facts, which we have narrated above, are not in dispute, except that according to the petitioner, the petitioner is the rightful owner of the land and entitled to compensation. Reliance is placed on the revenue records and the Declaration evidencing the oral Gift/Hiba. Counsel for the LAC, however, has contended that the petitioner is not the rightful owner and the compensation stands paid to the original owners.
12. We find force in the submission of Mr. Sah, learned counsel for the petitioner to the extent that in case the petitioner had no concern with

the land, no notice would have been issued to the petitioner dated 20.02.2014. The notice dated 20.02.2014, reads as under:

“OFFICE OF THE ADDITIONAL DISTRICT
MAGISTRATE (SOUTH-EAST)
M.B. ROAD, SAKET, NEW DELHI

No.1610

Dated: 20/02/2014

NOTICE

Whereas, part of Khasra No.124 Min and 125 Min has been acquired by Award No.07/2013-14 Village Jamia and the payment of compensation for the said land has to be given to the recorded owner as per revenue record.

Whereas, you have filed Claim Petition under Section 9 & 10 for the said land and claiming to be the rightful owner of the said land.

Whereas as per Naksha Mutzamin, your name has not been mentioned in the revenue record. However, you are directed to appear before the undersigned on 28/02/14 at 12:30 pm with all the relevant records showing your ownership on the said Khasra no. failing with compensation for the said Khasra No. will be given to the recorded owner/LR's of the recorded owner.

Sd/-
(AJAY KUMAR)
ADM/LAC(SE)

To,
Sh. Mansoor Azam
s/o Abdul Hanan
r/o 559, Gali Hakimji
Churi Wallan
Delhi-6”

13. Reply to this notice was submitted by the petitioner on 28.02.2014, which reads as under:

“To

Dated:28/FEB/2014

The ADDITIONAL DISTRICT MAGISTRATE
SOUTH EAST,
SAKET, NEW DELHI.

Sub:- Release of compensation for Khasra No.125 Min situated in village OKHLA.

Respected Sir,

This is for your kind information that Mr. Abdul Alim is the owner of Khasra No.125 Min as per your revenue record also. Mr. Abdul Alim during his life time gifted this land and structure to his grandson Mr. Abdul Hannan in the year 21/1/1960 and Mr. Abdul Hannan is enjoyed his physical possession till his sons Mr. Mansoor Azam and Mr. Adnan Azam i.e. the owner of this land and structure.

So we requested you to release the compensation as early as possible.

Thanking you

Sd/-

(MANSOOR AZAM)
s/o late Abdul Hannan
R/o 559 Gali Hakimji
Chooriwalan, Delhi-6.

Enclosed:-

- (1) Copy of Khaton
- (2) Copy of Khasra girdavari
- (3) Copy of Death Certificate of Mr. Abdul Alim
- (4) Copy of Death Certificate of Mr. Abdul Hannan”

14. A careful reading of the notice and reply to the notice would show that a claim petition was filed by the petitioner under Section 9 and 10 of the Act. The petitioner was called upon to appear before the ADM/LAC on 28.02.2014 at 12:30 P.M. The petitioner was called upon to produce relevant records showing his ownership. The reading of the reply would show that the petitioner had claimed ownership over the subject land through the Gift/Hiba by his great-grandfather in the year 1960. The petitioner claims to be in physical possession of the land along with other family members. Along with his reply, the petitioner had submitted a copy of Jamabandi, copy of Khasra Girdawari, Death Certificate of Mr. Abdul Alim and Mr. Abdul Hanan. Based on the aforesaid documents, we are of the considered view that prior to releasing the money, the ADM/LAC should have decided the objections of the petitioner and in case the ADM was of the view that the petitioner has no right, title or interest over the subject land, a reasoned order should have been passed.
15. Accordingly, we allow this writ petition with a direction to the ADM/LAC to decide the objections of the petitioner after examining the records and after hearing the relevant parties.
16. The petitioner shall appear before the ADM/LAC on 14.06.2018 at 2:30 P.M.
17. The objections would be decided within a period of three months from 14.06.2018.
18. An opportunity of hearing would be given to the parties and thereafter a reasoned order would be passed and a copy be served upon the petitioner at the address so given in the writ petition.

19. With these directions, the writ petition is disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

MAY 21, 2018

pst

