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

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+ **W.P.(C) 4673/2019 & CMs 20717/2019 and 20719/2019**

SMT JATINDER BADOGHU

.....Petitioner

Through: Ms Karuna Nundy, Mr Ishaan Karki
and Ms Krishna Parkhani, Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr Yeeshu Jain and Ms Jyoti Tyagi,
Advocates for LAC/L&B.

Mr Madhusudan Bhayana, Advocate
for R-5.

Mr Sandeep Tyagi, Advocate for R-1
& 2.

Mr Sanjeev Sagar, Standing Counsel
for DDA with Ms Nazia Parveen,
Advocates for DDA.

Mr Sumeet Pushkarna and Mr
Devanshu, Advocates for DJB/R-3.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

15.05.2019

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Dr. S. Muralidhar, J.:

1. This writ petition under Article 226 of the Constitution of India is filed by a woman belonging to the Jatav Community, Scheduled Caste ('SC'), seeking the quashing of a notification dated 29th August, 2006 issued under Section 4 of the Land Acquisition Act, 1894 ('LAA'), the corresponding declaration under dated 12th October, 2006 under Section 6 LAA and Award

No.3/2007-08 dated 20th August, 2007 with respect to the acquisition to the land admeasuring 52 bighas and 13 biswas in Village Nazafgarh for the public purpose of '40 MGD Water Treatment Plant for Dwarka'.

2. Apart from this prayer, the Petitioner also prays for a direction to the Respondent i.e. the Government of NCT of Delhi through its Land & Building Department (Respondent No.1), the Union of India through the Land Acquisition Collector ('LAC'), District South West (Respondent No.2); the Delhi Jal Board ('DJB') through its Secretary (Respondent No.3); the Delhi Development Authority ('DDA') through its Chairman (Respondent No.4) and the Tehsildar Village Nazafgarh (Respondent No.5) to vacate and hand over the peaceful possession of the subject land to the Petitioner.

3. An alternative prayer is for a direction to the said Respondents to "re-demarcate the unutilized land and hand over possession of the land not in use". A direction is sought to the Respondent No.1 "to demarcate the 13.8 Bigha of the subject land acquired by the Respondents so as to render the remaining 1.2 Bigha of land usable by the Petitioner".

4. The Petitioner states that through a registered sale deed dated 3rd November, 2003, she purchased agricultural land in Khasra Nos. 41/3/2 (4-15), 41/8(4-16), 39/23/2(4-0) & 41/4/2(0-9) at Village Najafgarh in 2003 for a sum of Rs.11,40,000/-. Along with the above notification under Section 4 LAA dated 29th August, 2006, the urgency clause under Section 17 (1) of the LAA was invoked. It is stated that of the total land of 52 bighas and 13 biswas in Village Nazafgarh that was sought to be acquired, the 13 bighas

and 6 biswas of land owned by the Petitioner (out of the 14.8 bigha of land owned by her) was also sought to be acquired.

5. It is stated by the Petitioner that the possession of the subject land was taken over by the LAC on 2nd November, 2006 and handed over to the DDA on 26th December, 2006. The Petitioner states that she made written request to the LAC to demarcate the land owned by her on 21st and 26th March, 2007. On 28th March, 2007, 80% of the compensation amount of Rs.52,57,616/- was paid to the Petitioner. According to the Petitioner, this was paid after the possession was taken and, therefore, was in violation of Section 17 of the LAA. However, the fact remains that the Petitioner accepted this payment without protest.

6. It is further stated that on 6th July, 2007, the physical possession of the land was taken and handed over by the DDA to the DJB for construction of the water treatment plant. An Award dated 20th August, 2007 passed by the LAC *inter alia* determining the compensation payable.

7. Meanwhile, the work of construction of the 50 MGD water treatment plant (WTP) was awarded to L&T Ltd. on 10th February, 2009.

8. On 11th November, 2013, the Petitioner and certain other land owners filed W.P.(C) No.5470/2013 in this Court claiming the remaining 20% compensation. By an order dated 11th November, 2013, this Court disposed of the said writ petition by the following order:

“The learned counsel for the DDA states that the amount of compensation due to the petitioner has been released by the

DDA to the Land and Building Department. The learned counsel appearing for the Land and Building Department states that the balance amount of 20% of the compensation shall be paid to the petitioner within two weeks. On this statement, the writ petition stands disposed of.”

9. It will be noticed that even at this stage, no plea was raised by the Petitioner that the land acquisition proceedings were illegal.

10. As a result of non-compliance of the above assurance, the Petitioner and other land owners filed Cont Cas (Civil) No. 10/2014, in which the following order was passed by this Court on 10th January, 2014:

“This contempt petition is predicated on the alleged non compliance of the orders passed by. the Division Bench of this Court in Writ Petition (C) No.5470/2013 on 11th November, 2013, wherein statement of counsel for the DDA to the effect that the amount in question was released by the DDA to the Land and Building Department, and that the balance 20% of the compensation due to the petitioners shall be paid to the petitioner by the Land and Building Department within two weeks.

The time has long expired. Issue notice to the respondents. Mr. Yeeshu Jain, Advocate, accepts notice on behalf of respondents 1 and 2. Mr., Ajay Verma, Advocate, accepts notice on behalf of the DDA and states that the amount in question as released by the DDA was forwarded to the Land and Building Department even prior to 11th November, 2013.

Counsel appearing for the Land and Building Department states, on instructions, that matters got delayed because of the impending elections to the State Legislature and the preoccupation of various departmental officials in the electoral process. He further submits that the said amount shall now be definitely released to the petitioners without fail, within another

2 weeks from today.

The statement made on behalf of the respondents 1 and 2 is accepted by this Court, and they shall remain bound by the same. Counsel for the petitioners states that under the circumstances, he does not wish to press this matter any further. Consequently, the instant petition is disposed off in the above terms.

A copy of this order be communicated to respondents 1 and 2.

A copy of this order be given dasti under the signature of Court Master to counsel for the parties.”

11. Thereafter on 21st May, 2014, the balance 20% compensation amount in the sum of Rs.15.86 lakhs was paid to the Petitioner. This payment was also accepted by her without any protest. On 4th June, 2014, the land acquisition payment certificate was issued by LAC in favour of the Petitioner stating as follows:

"This is to certify that the land mentioned below of the Village Najafgarh has been Acquired vide Notification F.10(49)/02/L&B/LA/8491 dated 29.08.2006 and Award no. 03/2007-08 announced on 20.08.2007. The Possession of the land has been transferred to the government department on 26.12.2006.

Smt. Jatinder Badoghu w/o Kanwaljit Badoghu i4/as the owner/shareholder in the Acquired Land and compensation of the land was paid the detail of which is as under-

1. Rs. 52,57,616/-paid on 28.03.2007 i.e. 80%

2. Rs. 15,86,621 paid on 21.05.2014 through RTGS i.e. 20%”.

12. Two months thereafter on 5th August, 2014, the Petitioner applied for an alternative plot under the scheme of ‘Large Scale Acquisition, Development

and Disposal of Land' in Delhi.

13. The 50 MGD WTP was completed and was successfully commissioned on 1st May, 2015. According to the Petitioner, the land belonging to the Petitioner was not utilized and was kept for 'future expansion'. Meanwhile, the demarcation request was made to the Respondent No.5 by the Petitioner on 14th September, 2015, 14th March, 2016 and 1st April, 2016. A reminder was sent on 5th December, 2016, but she did not receive any response. The Petitioner states that in the meanwhile an RCC boundary wall was constructed around the acquired land.

14. Another writ petition being W.P.(C) No. 1310/2015 was filed by the Petitioner and other land owners in this Court with a limited prayer of seeking payment of interest on the land acquisition compensation paid to them under Section 34 of the LAA. On 11th January, 2017, the following order was passed in the said writ petition:

“In this writ petition the only prayer is with regard to payment of interest under Section 34 of the Land Acquisition Act, 1894. The land in question had been acquired under the emergency provisions and possession of the same had been taken on 02.11.2006. At that point of time 80% of the compensation amount had been paid to the petitioner. With regard to the balance 20%, the same was only paid after an order was passed by this Court on 11.11.2013 in W.P(C) 5470/2013. However, interest on this balance 20%, which is payable under Section 34 of the said Act, has still not been paid. Consequently, we direct that the respondents and, in particular, the Land Acquisition Collector i.e. respondent No.1 shall make the payment of interest at the rate of 9% as provided in Section 34 computed from the date of taking of possession till the dates of payment i.e. from 02.11.2006 to 18.03.2014 and 21.05.2014. The interest

amount be computed and be paid to the petitioners within four weeks from today.

The writ petition is allowed to the aforesaid extent.”

15. At this stage also, no issue was raised by the Petitioner that the land acquisition proceedings were illegal. Thereafter CM No.27028/2017 was filed by the Petitioner and other co-Petitioners in the said disposed of W.P.(C) No. 1310/2015. The said application was allowed by an order dated 31st July, 2017, which reads as under:

“Issue notice. Sh. Yeeshu Jain and Sh. Arjun Pant, Advocates accepts notice.

The petitioners/applicants seek clarification with respect to the rate of interest directed by the final order of the Court dated 11.01.2017.

It is brought to the notice of the Court that the proviso to Section 34 of the Land Acquisition Act, 1894 [hereafter "the 1894 Act] states that if no compensation is paid or deposited within one year from dispossession, the rate of interest would be 15% dispossession cannot be disputed since it is a matter of law.

The respondents are present.”

16. Even at this stage, no issue was raised by the Petitioner about any illegality attached to the land acquisition proceedings, which stood completed under the LAA.

17. The Petitioner states that in response to a query addressed to the Executive Engineer (Dwarka Water Treatment Plant) on 8th November 2018, she received a reply that the unutilized land was proposed for construction of

the balance 50MGD WTP out of the total planed 100 MGD WTP. The Petitioner states that there exists a large area adjacent to the existing WTP “in which the expansion may occur”. It is stated that it is currently lying unused and has become a garbage site for the locals. According to the Petitioner, the land which belonged to her has been lying unused for the past 13 years despite it being earmarked for ‘future expansion’.

18. It is in these circumstances that the present petition has been filed seeking the above reliefs.

19. Ms. Karuna Nundy, learned counsel for the Petitioner, relied upon the judgment of the Supreme Court in *Radhey Shyam v. State of U.P.* (2011) 5 SCC 553 to urge that the High Court should not adopt a pedantic approach in deciding a challenge by a land owner to the acquisition of land. Pointing out that the Petitioner belonged to the SC, she referred to Section 41 (9) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘the 2013 Act’) which is a special provision for SCs and Scheduled Tribes (STs). According to her, since the earlier land acquisition proceedings were “in disregard of laws and regulations” they should be treated as ‘null and void’. Ms. Nundy submitted that although there is no such provision in the LAA, “the principle and rationale behind enacting” Section 41 (9) of the 2013 Act should govern the concluded land acquisition proceedings.

20. Ms. Nundy submitted that inasmuch as the earlier land acquisition proceedings were in complete disregard of the mandatory requirement of

Section 5-A read with Section 17 of the LAA, it should be declared to be illegal. In support of this proposition, reliance was placed on the decisions in *Babu Ram v. State of Haryana (2009) 10 SCC 115*; *Anand Singh v. State of UP. (2010) 11 SCC 242*; *Union of India v. Krishan Lal Arneja (2004) 8 SCC 453* and *Darshan Lal Nagpal (dead) v. Government of NCT of Delhi (2012) 2 SCC 327*.

21. The above submissions of Ms. Nundy cannot be accepted for several reasons. In the first place, there was no challenge raised by the Petitioner to the land acquisition proceedings at any of the stages i.e. the issuance of the notifications under Section 4 or Section 17 or the declaration under Section 6 of the LAA or even after the Award was pronounced on 20th August 2007. As noticed hereinbefore, the earlier writ petitions in this Court were filed by the Petitioner and other land owners for the limited purpose of the balance 20% compensation and thereafter for interest on the said compensation. In between a contempt petition and a Miscellaneous Application were also filed. At no stage during any of those proceedings, was any question raised regarding the legality of the land acquisition proceedings. There is no attempt made to explain what prevented the Petitioner from raising a challenge to the land acquisition proceedings during those years. Secondly the total compensation, albeit in two instalments of 80% (Rs. 52,57,616 paid on 28th March 2007) and 20% (Rs. 15,86,621 paid on 21st May 2014) was paid to her and accepted by her as such without protest or without seeking any reference under Section 18 LAA for enhancement.

22. Thirdly, none of the decisions cited on behalf of the Petitioner involves a

similar situation where the Petitioners had earlier approached the Court with petitions seeking payment of balance compensation; had thereafter received the full compensation pursuant to the orders passed by the Court without protest and later again instituted proceedings questioning the land acquisition proceedings in terms of which compensation had been paid to them.

23. Fourthly, the admitted position is that the acquisition proceedings in the present case took place under the LAA and not under the 2013 Act. Further, there was no provision corresponding to Section 41(9) of the 2013 Act in the LAA. Fifthly, the Court is unable to accept the plea of Ms. Nundy that Section 41 (9) of the 2013 Act would at all apply in the present case. That provision anticipates the acquisition that has taken place to be “in disregard of the laws and regulations for the time being in force”. The expression ‘laws and regulations’ has to be understood in the context of special provisions for SCs and STs. It refers to laws concerning land belonging to SCs and STs which would include those mentioned in Schedules V and VI to the Constitution of India. For instance, there are many central and State laws that deal with transfer of rights to land belonging to SCs or STs.

24. The land acquisition proceedings under the LAA in terms of which the Petitioner’s land was acquired cannot by any stretch of imagination be characterized as being “in disregard of the laws and regulations for the time being in force”. To repeat, the Petitioner did not at any stage of those proceedings question their legality. The full compensation amount as determined under the LAA was received by her without protest. The Award passed under the LAA was not challenged. To permit her to now do so would

amount to condoning an abuse of the process of law. Consequently, this Court is not able to accept the plea of the Petitioner that the 'principle' behind Section 41 (9) of the 2013 Act would apply to the acquisition of the Petitioner's land under the LAA.

25. As regards the issue of return of unused land, Section 101 of the 2013 Act provides for it, but that would apply only where the acquisition took place under the 2013 Act since the provision uses the expression 'this Act'. There is no provision in the LAA which corresponds to Section 101 of the 2013 Act. The question of therefore return of unutilized land to the Petitioner does not arise.

26. Further the Court is not able to accept that the land which is adjacent to the WTP and is lying vacant, but within the RCC boundary wall, should be treated as 'unutilized'. As pointed out by the Petitioner, the DJB has informed her that the said land has been earmarked for future expansion of the WTP by another 50 MGD. If the vacant portion of the land is being misused by locals, the remedy lies elsewhere. The answer is not issuing a direction to return the land which has in fact been earmarked for future expansion of the WTP, which undoubtedly is the original public purpose for which the land was acquired.

27. Ms. Nundy then submitted that this was an instance of gross injustice being meted out to an SC woman. However, at one stage she offered to deposit the entire sum of approximately Rs. 70 lakhs received by the Petitioner as compensation in the Court for notice to be issued in this petition. When asked whether she had the means to do so, Ms. Nundy on

instructions volunteered that the Petitioner's husband owned nearly 2 acres of agricultural land in Punjab.

28. To this Court it appears that the Petitioner is not a person in dire need of the land for her livelihood. She is a person not without means. She has already had several opportunities to question the legality of the land acquisition proceedings that concluded in 2007, nearly 12 years ago and in terms of which she received compensation of around Rs. 70 lakhs without protest. Therefore, the Court is not persuaded that in the facts and circumstances of the case, any injustice as claimed has been caused to the Petitioner.

29. For the above reasons, the Court is not inclined to grant any of the reliefs prayed for. The petition and pending applications are dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 15, 2019

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