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

+ **W.P.(C) 6935/2015**

M/S. PARAM EXPORTS &
CONSTRUCTION PVT. LTD.

..... Petitioner

Through: Mr. Ravi Gupta, Sr. Advocate with
Mr. Ankit Jain, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

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

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
24.07.2019

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1. This is the second round of litigation involving the Petitioner. The relief sought is a declaration of deemed lapsing of land acquisition proceedings *qua* the Petitioner's land measuring 2 Bighas 12 Biswas in Khasra No.435/179, Village Masoodpur, Delhi (hereinafter the "subject land") under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act').

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 22nd November 1990 and declaration under Section 6 and 17(1) of the LAA was issued on 6th

September 1991. The impugned Award No. 5/93-94 was passed on 3rd September 1993.

3. The Petitioner had earlier filed W.P.(C) No. 1958/1992 titled ***Param Exports & Construction Pvt. Ltd. v. Delhi Administration & Ors.*** in which initially on 25th May 1992, status quo as regards possession of the subject land was ordered by this Court to be maintained. Meanwhile, on 3rd September 1993, the impugned Award came to be passed by the Land Acquisition Collector (LAC) determining the compensation for the subject land. However, in view of the abovementioned stay order, possession thereof could not be taken.

4. In the counter affidavit filed on behalf of the Land & Building Department (L&B) in W.P. (C) 1958/1992, it was, inter alia, stated that the land was acquired for the 'Planned Development of Delhi' and urgently required for the development of Vasant Kunj Block-C, Sector-B, Pocket-VII. It was stated that the according to the Delhi Development Authority (DDA), development was "held up due to non-availability of the land in question which falls in the middle of acquired land and if the land in question is not acquired urgently, unauthorized constructions may come up, which may thwart the project for which the land is so required." In para 5 of the affidavit, it was stated that "the possession of the land has not been taken over by the LAC since evaluation of the structure on Khasra No.435/179 has not yet been completed". It was further stated that "as soon as the evaluation of the structures in the above Khasra number is completed the land owner shall receive eighty per cent of the compensation prior to taking over possession of the land under acquisition".

5. A separate counter affidavit was filed by the DDA in para 4 of which it was stated that the said land was required for “widening of Mehrauli – Mahipalpur Road from Andheria Mor to Masoodpur”. It was stated that the road was proposed to be of 8 lanes with 75 meter right of way and that the technical committee of DDA had approved the road plan proposed by the Public Works Department (PWD).

6. The writ petition was finally heard by this Court on 26th November 2010 and disposed of by the following order:

“The land of the petitioner was sought to be acquired for planned development of Delhi under the Land Acquisition Act, 1894. There were certain subsequent developments and it is not disputed that the land is sought to be acquired for widening of the Mehrauli-Mahipalpur Road alone. It is the case of the petitioner that while the abadi is on one side where they were located, the widening and alignment of the road can take place by increasing the width of the road from the other side, which is a Lal Dora area and acquisition in respect of the same has been sustained by the Supreme Court. Learned counsel submits that for widening of the road the land of the petitioner is really not required to be taken possession of.

It was pointed out to us on 10.3.2010 that a representation has been made by the villagers to the Lieutenant Governor though no specific representation has been made by the petitioner. There were certain notings of the Lieutenant Governor, the intent of which was that the matter be brought before UTTIPEC as well as Planning Zone ‘J’ for consideration and approval. The matter is being thereafter examined by the respondent authorities.

After some argument it is agreed that in case the land of the petitioner falls in the right of way for construction of the

road and peripheral requirements, the petitioner really cannot make any grievance and would be entitled only to compensation of the land. However, if the land of the petitioner does not actually fall within the right of way and for peripheral requirements and the road can be, thus, constructed leaving the land of the petitioner, then there would be no need to utilize the land of the petitioner and dislocate them.

Learned counsels for the respondents state that on approval of necessary authorities and survey at site the actual alignment of the road would be decided and the land would be required only for the road as set out hereinabove. In the eventuality that the land of the petitioner is not required for the road, the same can be released from the acquisition.

The aforesaid statement is taken on record.

The writ petition stands disposed of in the aforesaid terms.”

7. The above order appears to be an order by consent, since it records that “after some arguments it is agreed that in case the land of the petitioner falls in the right of way for construction of the road and peripheral requirements, the petitioner really cannot make any grievance and would be entitled only to compensation of the land”. It is further recorded that if the land of the Petitioner was not within the right of way and the road could be constructed leaving out the land of the Petitioner, then there will be no need to utilise that land and dislocate them. It was undertaken by the counsel for the Respondents that “on approval of necessary authorities and survey at site the actual alignment of the road would be decided and the land would be required only for the road as set out hereinabove.” It was further stated that in the eventuality that the land of the Petitioner was not required for the road, the same was to be released from acquisition. The above statement was

taken on record.

8. Therefore, in terms of the said order, it is plain that a decision had to be taken by the Respondents on the basis of the “survey at site” to find out whether the actual alignment of the road would envisage the land of the Petitioner being utilised for the right of way in order to construct the road. A decision had to also be taken that if the land was not required for the above purpose, then it should be released from acquisition.

9. According to Mr. Ravi Gupta, learned Senior counsel appearing for the Petitioner, till the date of filing of the present petition on 20th July 2015, and even till date, no decision was taken on whether the writ subject land was required for the purposes of right of way for the road in question, or if it was not so required whether it should be released from acquisition. Meanwhile, the 2013 Act was notified to be operative from 1st January 2014. The Petitioner claims that it is entitled to the relief of a declaration of deemed lapsing of land acquisition proceedings under Section of 24(2) of the 2013 Act since the Petitioner continues to remain in possession of the subject land and no compensation has been paid in terms of the Award.

10. In response to the notice issued in the present petition, separate replies have been filed by the LAC and the DDA. Two specific issues were required to be addressed by these Respondents. The first was whether pursuant to the order dated 26th November 2010 a decision had been taken, keeping in view the alignment of the road, if the subject land was required for the purpose of road construction/expansion, the right of way or peripheral requirements. The second, was whether possession of the subject land was yet to be taken

and whether compensation in respect thereof had paid to the Petitioner in terms of the Award. Unfortunately, neither of the counter affidavits makes a categorical statement on either of these issues.

11. As far as the DDA is concerned, it is stated in para 5(iii) of the counter affidavit as under:

“The present petition is barred by res judicata in view of the history of prior litigations as discussed by the petitioner himself in the petition. It is stated that as already recorded in the order passed by the division bench of this Hon’ble Court in the order dated 26.11.2010 passed in WPC-1958/1992 in the land in question is falling in the widening of Mehrauli Mahipalpur Road. Moreover the possession of the land could not be taken due to the interim stay granted by this Hon’ble Court on 25.05.1992 which continued till 26.11.2010 therefore provisions of Section 24(2) of New Land Acquisition Act, 2013 are not attracted in the facts and circumstances of this case.”

12. It is further stated in para 5(v) as under:

“It is further submitted that the physical possession of the acquired land has not been handed over to the respondent-Delhi Development Authority by the LAC/ Land and Building Department, Govt. of NCT of Delhi. It is further submits that the petitioner has not placed on the records of the present case any document to show its possession over the acquired land. The photographs filed before the Hon’ble Court can be anywhere.”

13. There is no categorical denial by the DDA that the Petitioner continues to be in possession of the subject land. On the other hand, DDA states that the LAC has not handed over to it the physical possession of the subject land.

14. The counter affidavit of the LAC does no better. Para 4 of that affidavit read as under:

“4. That it is submitted that the lands of village Masoodpur were notified vide Notification under section 4 of the Land Acquisition Act, 1894 dated 22.11.1990 which was followed by the Notification under section 6 & 17(1) of the Act dated 6.9.1991. The Award was also passed vide Award No.5/93-94 dated 6.9.1993. It is submitted that the petitioner challenged the acquisition proceeding by filing a writ petition number 1958/1992 which was disposed vide judgment dated 26.11.2010 whereby it was observed that if the land of the petitioner falls in the right of way for construction of road and peripheral requirements, the petitioner cannot make any grievance and would be entitled to compensation. It was further observed in the said judgment that the respondents on approval by necessary authorities and survey at site the actual alignment of the road would be decided. Since the file of award 05/93-94 is not traceable, it is difficult to state the status of possession proceedings as regard to the land falling in khasra number 435/179 (2-10) and the status of the compensation can also not be ascertained in the absence of the acquisition records.”

15. It should not be difficult for the LAC to inform the Court about the status of possession of the subject land. All that was required to be done was to actually go to the site and physically verify whether the Petitioner was still in possession of the land in question. In fact, if the Respondent had cared to comply with the order dated 26th November 2010, then as undertaken before this Court when the said order was passed, a survey at the site would have been undertaken. Apart from determining the actual alignment of the road, which in turn would have decided whether the subject land was required for the road and peripheral purposes, such survey would also have revealed if the Petitioner continued to be in possession of the

subject land. The Court notes with some concern that the Respondents have failed to take any action after the order passed by this Court on 26th November 2010. Neither of the affidavits state the reasons for failing to do so.

16. A collective reading of both the affidavits of the DDA and the LAC indicates that the assertions of the Petitioner that it continues to remain in possession of the subject land and that it has not received any compensation till date, have remained uncontroverted. Even today, no instructions have been given to counsel appearing on behalf of the LAC other than what is already stated in the counter affidavit, viz., that the records are not traceable.

17. After the enactment of the 2013 Act, in terms of Section 24(2) thereof, the relief of declaration of deemed lapsing of the land acquisition proceedings follows where the Award is more than 5 years old and either of the two eventualities exist, viz., that possession of the land acquired has not been taken or the compensation in respect thereof has not been paid.

18. The facts narrated hereinbefore make it plain that the requirements of Section 24 (2) of the 2013 Act stand fulfilled in the present case. It is also evident that the Respondents, despite an assurance given to this Court as recorded in the order dated 26th November 2010 in W.P(C) 1958/1992, have failed to comply with the directions issued by this Court, and have no reasonable explanation for the same.

19. Consequently, the Court issues a declaration to the effect that the acquisition of the Petitioner's land in Khasra no.435/179 admeasuring 2 Bighas 10 Biswas in village Masoodpur, New Delhi is deemed to have

lapsed in terms of Section 24 (2) of the 2013 Act. It is, however, clarified that, if, hereafter the Respondents require the subject for the purposes of expansion of the road or for any other peripheral purposes, it would be open to the Respondents to proceed in accordance with law.

20. The writ petition is allowed in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 24, 2019/ hs