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

+ **W.P.(C) 7766/2015**

M/S SAMANIT ENTERPRISES AND ANR. Petitioners

Through: Mr. Sanjiv Bahl, Mr. Eklavya Bahl
and Mr. Apoorva Bahl, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.
Mr. Pawan Mathur, Standing Counsel
DDA.

+ **W.P.(C) 7901/2015 & CM APPL. 15965/2015**

M/S ULTIMATE SERVICES PVT. LTD AND ANR. Petitioner

Through: Mr. Sanjiv Bahl, Mr. Eklavya Bahl
and Mr. Apoorva Bahl, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Siddharth Panda, Advocate for
LAC/L&B.
Mr. Pawan Mathur, Standing Counsel
DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **28.02.2019**

1. These two petitions arise from a common set of facts and are accordingly

being disposed of by a common order. They were, however heard separately.

2. The facts in W.P.(C) 7766/2015 are that the Petitioners i.e. Samanit Enterprises (Petitioner No. 1) and its partner Sameer Gupta (Petitioner No. 2) through a registered sale deed dated 19th September 1996 purchased and took possession of property bearing municipal No. S-1/A in the colony known as Arjun Nagar admeasuring 116 sq. yds. comprised within Khasra No. 52/2/2 situated in the revenue estate of village Humayun Pur, Tehsil Mehrauli, Delhi. It is stated that the mutation of the property has also been carried out in the relevant municipal records in the name of the said Petitioners. The Petitioners claim that the property comprises of a commercial building having a basement, as well as three floors. The basement till the second floor is stated to be in the possession of the Petitioner and the third floor is on rent.

3. As far as W.P.(C) 7901/2015 is concerned, it is stated that by a registered sale deed dated 10th October, 1996, the Petitioners i.e. Ultimate Services Pvt. Ltd. (Petitioner No. 1) and G. Verghese (Petitioner No. 2) purchased and took possession of the property bearing municipal No. S-1/A in Arjun Nagar admeasuring 220 sq. yds. comprised in Khasra No. 53-52/2/2 situated in the revenue estate of village Humayun Pur, Tehsil Mehrauli, Delhi. Here again, it is stated that the mutation of the property has been carried out in the relevant municipal records and the property continues to be in the possession of the Petitioners. It is stated that a 'frame shop' is located in the said property.

4. The first round of litigation commenced with both sets of Petitioners filing writ petitions in this Court. While the Petitioners in W.P.(C) 7766/2015 filed Civil Writ Petition No. 533/1997, the Petitioners in W.P.(C) 7901/2015 filed Civil Writ Petition 534/1997. The reliefs sought in both writ petitions were identical. It was for a declaration that the respective properties were free from acquisition proceedings that had taken place under Land Acquisition Act, (LAA) 1894 culminating an Award Nos. 1170 and 1170 A dated 23rd October 1963 passed by the Land Acquisition Collector (LAC), preceding which, the notifications and declarations under Sections 4 and 6 of the LAA respectively had been issued. The said Awards were in respect of Khasra Nos. 51 and 52 in the revenue estate of village Humayun Pur, Tehsil Mehrauli, Delhi.

5. The case of the Petitioners in both writ petitions was that the land that had been purchased by the aforementioned registered sale deeds fell outside the purview of the land acquisition proceedings. According to the Petitioners, sometime in 1997, the Delhi Development Authority (DDA) began claiming that the lands purchased by the Petitioners were the subject matter of the Award Nos. 1170 and 1170 A. Therefore, the prayer in both writ petitions was for declaration that property bearing municipal No. S-1/A comprised in Khasra Nos. 52/2/2 and 53-2/2 in village Humayun Pur was free from acquisition proceedings.

6. In the said writ petitions, pursuant to a direction issued by this Court,

the Sub Divisional Magistrate (SDM), Hauz Khas undertook a demarcation exercise and submitted a report dated 28th April 2000. Both Civil Writ Petitions 533/1997 and 534/1997 were disposed of by a common judgment dated 8th January 2003 of the Division Bench of this Court. It was held that in view of the report submitted by the SDM, the Petitioners were justified in their contention that the area to the extent of 7 biswas comprised in khasra No. 52/2/2 of Humayun Pur was free from acquisition proceedings. However, as regards the prayer for grant of relief of injunction against the DDA, in view of the demarcation report by the SDM which stated that “the building/plot presently occupied with the Petitioners falls in khasra No. which is acquired land”, the Division Bench declined to grant that relief. The operative portio of the judgment of the Division Bench was: “The land comprised in Khasra No. 52/2/2 of Humayun Pur measuring 7 biswas is held to be free from acquisition. The remaining part of the relief is declined”.

7. Admittedly, against the said judgment dated 8th January 2003, no further appeal was filed by either of the Petitioners.

8. A second round of litigation commenced with the two sets of Petitioners filing Civil Suits. While the Petitioners in W.P.(C) 7766/2015 filed CS (OS) 1441/2004, the Petitioners in W.P.(C) 7901/2015 filed CS (OS) 1442/2004 in this Court. The prayer in both the suits was identical i.e. for a decree of declaration that the report dated 20th April 2000 of the SDM was “incorrect, illegal and bad in law” and for a consequential

decree of permanent injunction restraining the DDA from interfering with the peaceful possession of the Plaintiffs of the lands respectively claimed by each set of Petitioners i.e. Khasra Nos. 52/2/2 and khasra No. 53-2/2 in property bearing municipal No.S-1/A in village Humayun Pur.

9. Both suits ultimately came to be dismissed by the learned Single Judge by a common judgment dated 1st July 2014. The dismissal was on account of the learned Single Judge accepting DDA's preliminary objection as to the maintainability of the suits themselves. Among the reasons that weighed with the learned Single Judge in dismissing the suits was that the earlier order dated 8th January 2003 of the Division Bench of this Court, granting limited relief in the writ petitions filed by both sets of Petitioners, did not grant them any liberty to challenge the demarcation report of the SDM. That judgment had become final and therefore the same question could not be re-agitated by way of a civil suit.

10. It was also noted by the learned Single Judge that at the interlocutory stage in the suits, the learned Single Judge had declined interim relief by an order dated 15th December 2004 which was challenged before the Division Bench by the two sets of Petitioners by filing appeals. A status quo order had then been passed by the Division Bench initially and the appeals were finally disposed of by an order dated 12th December 2007 requiring the parties to maintain status quo during the pendency of the suits. It was held that this did not come in the way of the learned Single Judge proceeding to decide the suits on merits as the decision of the

Division Bench in the appeals was only at the interlocutory stage.

11. The two suits were clearly held barred by ‘res judicata’. In the process, the learned Single Judge also accepted the plea of the DDA for rejecting the complaints under Order VII Rule XI of the Code of Civil Procedure, 1908 (CPC).

12. Aggrieved by the above order of the learned Single Judge dismissing their suits, both sets of Petitioners filed RFA (OS) Nos. 102/2014 and 109/2014. A Division Bench of this Court by a common judgment dated 5th May 2016 disposed of both the appeals (along with another appeal RFA (OS) 131/2014) holding that the appropriate remedy for the Appellants was under the Delhi Land Revenue Act, 1954 (DLRA) since they were essentially questioning the correctness of the demarcation report of the SDM. Accordingly, the Appellants (Petitioners herein) were relegated to the appellate remedy provided under Section 64 of the DLRA. In other words, it was held that the suits themselves were not maintainable in view of the alternate remedy available to the Appellants under the DLRA. A time bound direction was issued to the Appellate Authority under the DLRA to decide the appeals of the Petitioners and it was clarified that “all observations with respect to non maintainability of the action and applicability of res judicata shall not come in the way of the present Appellant’s rights to agitate the ground on merits under Section 64”. A direction was issued to the Appellate Authority to “give the clear determination as to the identity of khasra No. 52/2/2 and the

individual or individuals in possession, as well as the character of the land, the extent and area of such possession as well as the character”.

13. It is stated that pursuant to the above order of the Division Bench in RFA (OS) Nos. 102/2014 and 109/2014, the present Petitioners filed their appeals under Section 64 of DLRA and those appeals are pending consideration before the Appellate Authority.

14. The present petitions came to be filed even while the aforementioned RFA (OS) Nos. 102/2014 and 109/2014 were pending before the DB of this Court. The occasion for Petitioners to file the present petitions was the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘2013 Act’) which came into effect on 1st January 2014. The rationale, according to Mr. Sanjiv Bahl, learned counsel appearing for the Petitioners, behind the filing these petitions is the ‘alternative plea’, viz., that in the event that the Petitioners do not succeed in demonstrating in the proceedings under the DLRA before the Appellate Authority that the lands in their possession were not part of the land acquisition proceedings, then as if on a demurer, i.e. assuming that such land does form part of the land acquisition Awards, the Petitioners will be entitled to the relief of deemed lapsing of land acquisition proceedings under Section 24 (2) of the 2013 Act.

15. Learned counsel for the Respondents on the other hand pointed out

that throughout, the plea of the present Petitioners has been that the lands which they had purchased and were claiming ownership of were not covered by the two land acquisition Awards. The entire basis of the earlier two rounds of litigation, both by means of writ petitions filed in this Court followed by the civil suits, was that those lands had not been acquired. It is, therefore, submitted that the Petitioners cannot now be allowed to plead to the contrary in order to claim the relief under Section 24 (2) of the 2013 Act.

16. In reply, Mr. Bahl volunteered that two courses of action would be possible. One was for the Court to keep the present writ petitions in abeyance awaiting the outcome of the proceedings before the Appellate Authority under the DLRA. Alternatively, he offered to withdraw these petitions to await the outcome of those proceedings with liberty to revive these writ petitions in case he did not succeed in the proceedings under the DLRA.

17. Having considered the above submissions, what is plain to the Court is that prior to the present petitions, the earlier two rounds of litigation in this Court were on the basis that the lands respectively purchased by the Petitioner by registered sale deeds, comprised in Khasra Nos. 52/2/2 and 53-2/2 in the revenue estate of village Humayun Pur did not form part of any land acquisition proceedings whatsoever. This has been the consistent stand of the Petitioners. It was on this basis that the abovementioned two petitions in 1997 were filed by the Petitioners and which came to be

decided by the Division Bench by its judgment dated 8th January 2003 whereby the Division Bench declared that the lands of the Petitioners in Khasra Nos. 52/2/2 were free from acquisition proceedings. That judgment attained finality. The question of now allowing the Petitioners to plead in the alternative that the lands did in fact form part of the acquisition proceedings in order to seek relief under Section 24(2) of the 2013 Act cannot be entertained.

18. As the Court views it, the only remedy the Petitioners can pursue is what has been observed by the Division Bench of this Court when it disposed of RFA (OS) Nos. 102/2014 and 109/2014 filed by the Petitioners, viz., that they have to pursue the remedy against the demarcation report dated 20th April 2000 of the SDM (which finds them to be in possession of land that has been acquired and handed over to the DDA) before the Appellate Authority under the DLRA. There is no question of today entertaining any plea on behalf of Petitioners that the lands purchased by them are within the purview of land acquisition proceedings when throughout they have been contending to the contrary.

19. Before this Court, the Respondents have consistently maintained that the lands purchased by the Petitioners i.e. lands falling in Khasra Nos. 52/2/2 and 53/2/2 do not fall within the purview of the land acquisition proceedings. That being the admitted factual position, the question of entertaining the present petitions on the basis that that the land could possibly form part of the land acquisition proceedings does not arise.

Consequently, the prayer for a declaratory relief with reference to Section 24 (2) of the 2013 Act is hereby rejected.

20. The Court, therefore, declines the prayer of the Petitioners that they should be permitted to withdraw these petitions with liberty to revive them after the conclusion of the proceedings before the Appellate Authority under the DLRA. The Court clarifies that it has not expressed any opinion on the merits of the appeals filed by the Petitioners before the Appellate Authority under the DLRA.

21. For the aforementioned reasons, the Court finds the present two petitions to be wholly misconceived and they are dismissed as such. The pending application is also disposed of. The interim orders dated 17th August 2015 in W.P(C) 7766/2015 and 21st August 2015 in W.P(C) 7901/2015 are hereby vacated.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 28, 2019

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