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

+ W.P.(C) 1053/2020

SHRI B S TOLANI

..... Petitioner

Through Mr. Anand Yadav and Mr. Pradyumn
Rao, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for R-2
and 4.
Mr. Abhinav Sharma, Adv. for R-3
Ms. Shobhana Takiar, Adv. for R-5/
DDA.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

28.01.2020

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1. This Writ Petition is filed by the petitioner seeking a direction to respondent No.3, to decide the application of the petitioner for de-notification of his land notified under section 4 of the Land Acquisition Act, 1894 vide Notification dated 21.7.2011. The case of the petitioner is that the process of Notification of the land of the petitioner under sections 4 and 6 of the Land Acquisition Act commenced in 2011. The Land Acquisition Collector passed the award on 27.12.2013. The petitioner then challenged the acquisition proceedings by filing a Writ Petition being W.P.(C)3049/2014. The Writ Petition was dismissed on 21.12.2018. Now, an SLP is filed against the said order of Division Bench and the same is also dismissed by the Supreme Court vide order dated 15.2.2019.
2. The grievance of the petitioner is limited. He has allegedly filed an application under section 48(1) of the Land Acquisition Act seeking de-

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notification of the land acquisition. According to the petitioner, its de-notification application has not been dealt with by the Lt. Governor so far. To the said effect, he relies upon a reply received under the Right to Information Act, 2005 dated 27.3.2015. He also relies upon a communication sent by the Government of NCT of Delhi on 21.10.2015. It is prayed that the Lt. Governor may take appropriate decision on this aforesaid application.

3. Respondents have entered appearance on advance notice. It has been urged that the issues raised here were argued before the Division Bench and have been dealt with by the Division Bench.

4. A perusal of the judgment of the Division Bench shows that the issues considered therein were whether the petitioner was denied benefit of hearing of his objections to the notification under section 4 as contemplated under section 5A of the Act of 1894 thereby resulting in violation of principles of natural justice and whether in the facts of this case respondent No. 4/LAC was required to issue notice for taking possession of the land in question. However, I cannot help but notice that the Division Bench had also duly dismissed the issue of the de-notification application said to have been filed by petitioner. In this context, reference may be had to the following paras of the said order which read as follows:-

“13. It is further averred that the petitioner’s application for de-notification dated January 7, 2012 under Section 48 (1) of the Act was required to be addressed and dealt with by the De-notification Committee and then forwarded to the Hon’ble Lt. Governor. By not considering the said application of the petitioner and simply rejecting it outright without giving a personal hearing to the petitioner, the respondents are stated to have violated their own policy and procedures.

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19. It is the case of the respondents that the petitioner's application for denotification under Section 48 (1) of the Act was duly considered by the Lt. Governor and ultimately rejected. It is further stated that the petitioner's grievance with regard to amount of compensation can be agitated before the appropriate authority.

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27. It is stated that the Hon'ble Lt. Governor of Delhi never took any decision on the de-notification application filed by the petitioner and the same had simply been forwarded to Vice-Chairman, DDA for his examination and comments. The petitioner relies on RTI reply dated April 4, 2012 in support of the same. Further vide RTI reply dated March 11, 2015, the said application is stated to have been forwarded to the Office of DDA and Department of Land and Building for information. Further RTI reply dated March 27, 2015, the Hon'ble Lt. Governor is stated to have categorically denied rejecting the petitioner's application for de-notification. It is therefore stated that the impugned notification under Section 6 of the Act and the consequent award have been passed without due consideration of the denotification application of the petitioner which is violative of the procedures in place.

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63. Ms. Takiar would then draw our attention to the petitioner's representation for de-notification under Section 48 of the Act of 1894. In this regard she would submit that the law as regards section 48 of the Act was settled inasmuch as it gave an opportunity to the State Government to withdraw from the acquisition at any stage before possession is taken and that such power can be exercised unilaterally and there is no requirement that the owner of the land should be given an opportunity of being heard and that the State Government cannot be compelled to give cogent reasons for a decision not to go ahead with its proposal to acquire a piece of land."

5. There is clearly merit in the submission of learned counsel for the respondent that the issue was urged before the Division Bench.

6. I may also note that the petitioner relies upon a communication,

namely, reply to an RTI query issued in 2015 (copy of the RTI application has not been filed) and a communication received from Government of NCT of Delhi. The Division Bench had heard arguments and passed a judgment on 21.12.2018 after the said communications had already been generated. The Division Bench clearly dealt with the issue raised herein.

7. That apart, section 48 of the Land Acquisition Act reads as follows:-

“48 Completion of acquisition not compulsory, but compensation to be awarded when not completed: —

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

8. Hence, it is only in cases where possession has not been taken, that liberty is given to the State to withdraw the acquisition. In the present case, the Division Bench in its judgment dated 21.12.2018 has categorically noted that possession was taken by the respondents on 30.12.2013. This fact has been duly noted in the conclusion of the judgment. The plea of learned counsel for the petitioner that in village Nasirpur some land had been denotified possession being taken appears to be a misplaced contention on

the face of statutory provisions.

9. In the light of the above, there is no merit in the present petition.
Petition is dismissed.

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JANUARY 28, 2020/n

JAYANT NATH, J.