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

+ W.P.(C) 17490/2022 & CM APPL.No.55810/2022, 55811/2022
RAJAN SOOD & ANR Petitioners

Through: Mr. Rajesh Yadav, Senior
Advocate with Mr. Nishit Kush
and Ms. Mercy Hussian
Advocates.

versus

DELHI DEVELOPMENT AUTHORITY
& ORS.

..... Respondents

Through: Mr. Sanjay Katyal, Standing
Counsel for Respondent No. 1
Ms. Yeeshu Jain, Standing
Counsel along with Ms. Jyoti
Tyagi for Respondent No. 2 and
3

Reserved on: 21.12.2022

Date of Decision: 04.01.2023

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present writ petition has been filed impugning the demolition action proposed by Respondent No.1, Delhi Development Authority ('DDA'), in Khasra Number 804/24-26 (5-14) of Village Sadhora Kalan, near Mahavir Modern Senior Secondary School, opposite Nanak Piau Gurudwara, New Delhi. The petition more specifically impugns the communication dated 12.12.2022 issued by Respondent no.1 to the

Deputy Commissioner of Police, District North West, Ashok Vihar, New Delhi, requesting for sufficient police force during the demolition program.

2. The Petitioners in this petition further seek a restraint against the Respondent No.1 from carrying out any demolition of the structure existing in both Khasra Nos. 804/24–26, admeasuring 5 *Bigha* 14 *Biswa* ('the subject land') and 940/23 (3–9).

3. The Petitioners state that the land forming part of Khasra No. 940/23 is unacquired by the Respondents and though, the impugned communication dated 12.12.2022, does not contain any reference to a planned demolition in the said Khasra, the present petition has been filed as there is an apprehension that Respondent No.1 may undertake demolition of the existing structure in Khasra No. 940/23 in addition.

4. The Petitioners admit that with respect to the subject land a notification under Section 4 of the Land Acquisition Act, 1894 ('the Act of 1894') was issued on 24.10.1961. On 23.12.1968 a notification under Section 6 of the Act of 1894 was issued. Thereafter, on 19.09.1986, an Award No. 107/1986-87 was passed by the Land Acquisition Collector in respect of the subject land.

5. The Petitioner contends that however, no possession of the land was taken by Respondents after the passing of the award. In contrast, the Respondents have consistently contended that the possession of the subject land was taken over on 23.09.1986 after following the due procedure including drawing of a *panchnama* and the title of the land vests in the Government.

6. The Petitioners filed an application on 21.10.2011 under Section

48 of the Act of 1984 ('application/representation'), before the Lieutenant Governor of Delhi, Respondent No. 2, for release of the subject land in favour of the Petitioners herein. The Petitioners thereafter filed a writ petition bearing W.P. (C) No. 7714/2011, wherein the Division Bench of this Court vide order dated 09.11.2011 directed the Respondents not to take any coercive action with respect to the subject land, before deciding the application under Section 48 of the Act of 1894. The Court further directed the Respondent authority to keep in abeyance adverse orders, if any, till 15 days after the communication of the said order.

7. The Petitioners have disclosed in the present petition that though the Petitioners' said representation remained undecided, however, with the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the Act of 2013'), the Petitioners preferred another writ petition i.e., W.P.(C) No. 1034/2015, against the Respondents i.e. Government of NCT of Delhi ('GNCTD'), DDA and Lieutenant Governor of Delhi, praying for a declaration that the acquisition proceedings *qua* the subject land in dispute have lapsed. It is stated that this Court allowed the said writ petition *vide* its order dated 30.08.2016 and held that the acquisition proceedings *qua* the subject land have lapsed under Section 24 (2) of the Act of 2013.

8. Respondent No.1, DDA and Respondent No. 3, GNCTD both impugned this Court's order dated 30.08.2016 before the Supreme Court in Civil Appeal Nos. 1927-1928 of 2022 on two primary assertions that the possession of the subject land was with the

Respondent No. 1 and even the compensation amount stood deposited. The Supreme Court vide its judgement dated 29.03.2022, allowed the said appeals filed by Respondent Nos. 1 and 3 and set aside this Court's order dated 30.08.2016. The Supreme Court held that the land acquisition proceedings under the Act of 1894 had not lapsed *qua* the subject land. Pertinently the judgment dated 29.03.2022 passed by Supreme Court has not been annexed with the present writ petition.

9. Learned senior counsel for the Petitioners states that notwithstanding the judgment of the Supreme Court dated 29.03.2022, the order dated 09.11.2011 passed by this Court in W.P. (C) No. 7714/2011 directing the Respondent No. 2 to consider the Petitioner's representation under Section 48 of the Act of 1894 for release of land continues to subsist inasmuch as the Respondent No. 2 has till date failed to decide the said representation. He states that therefore, the order dated 09.11.2011 restraining the Respondent No.1 from dispossessing the Petitioner continues to remain in operation as on date.

10. In reply, learned standing counsel for the Respondent No.1, who appears on advance notice, states that the present petition is an abuse of the legal process. He states that the Petitioners have willfully failed to annex the judgment dated 29.03.2022 passed by the Supreme Court, upholding the acquisition proceedings of Award No. 107/1986-87, which have attained finality.

11. He states that the possession of the land was taken over by DDA on 23.09.1986, after following the due procedure including drawing of a *panchnama*. He states that as per Section 48 of the Act of 1984, a representation for release of subject land from acquisition can be

considered only in a case where the possession of the land is not taken over by the acquiring authority. He states that in the facts of the present case, the Respondent No.1 has consistently asserted that the possession of the land has been taken over by it and the title vests with Government free from all encumbrances in accordance with law and therefore, the conditions necessary for invoking provisions of Section 48 of the Act of 1984 are not attracted.

12. He further states that the Supreme Court has returned a categorical finding that the observation of this Court in order dated 09.11.2011 with respect to Petitioner's possession of subject land was based on a supposition and no specific fact finding was given to the effect that the Petitioners are in possession of the subject land. He therefore states that the Petitioners' claim of possession on the basis of the order dated 09.11.2011 has been specifically negated by the Supreme Court in its judgment dated 29.03.2022. He states Petitioners' assertion of possession in the writ petition is re-agitation of a plea which has been specifically considered and rejected by the Supreme Court and thus, is an abuse of process.

13. He states that therefore there can be no consideration of the representation filed under Section 48 of the Act of 1894 as alleged by the Petitioner.

14. He states that in the present case the acquisition process forming subject matter of Award No. 107/1986-87 *qua* subject land has been completed and become final. It has also been tested and approved by the Supreme Court and therefore, at this belated stage there arises no issue of pendency of any application under Section 48 of the Act of

1984 with Respondent No. 2. He states that this plea is mischievous and needs to be rejected at the outset.

15. He further states that the present Petitioners have no right, title or interest in the land. They are not the recorded owners of the subject land. He states that their title is shrouded with fraud and an investigation is pending with the Anti-Corruption Branch. He therefore, concludes by stating that the present petition be dismissed for being an abuse of process of law.

16. Learned counsel for Respondent No. 2 and 3 have adopted the oral submissions of Respondent No. 1 and filed their written submissions opposing the prayers sought in the writ petition. Respondent No. 2 and 3 have especially challenged the right, title and interest of the Petitioners in the subject land.

17. This Court has heard the parties, perused the paper book and written submissions filed by the parties. The Court had also called for the record of W.P. (C) No. 1034/2015 and perused the pleadings in the said writ.

18. The Petitioner has not filed with the petition any title documents with respect to the subject land. The Petitioner has, however, contended in the writ petition that they are in settled possession of the built-up area in the subject land and in support relied upon utility bills and *Khasra Girdawaris*. Neither utility bills nor *Khasra Girdawaris* are evidence of Petitioners' title in law. The said documents only evidence Petitioners' occupation. In the absence of any title documents the Respondents plea that the Petitioners have no title in the subject land stands established on record.

19. The Petitioner in W.P. (C) 1034/2015 had pleaded and relied upon the order dated 09.11.2011 passed in W.P. (C) 7714/2011. The said order formed the basis of the findings of this Court in its order dated 30.08.2016 as regards the physical possession of the Petitioners. Subsequently, before the Supreme Court once again the said order dated 09.11.2011 was relied upon by the Petitioner herein to oppose the Respondents' appeals. However, the Supreme Court after considering the order dated 09.11.2011 held that the said order of the High Court does not return a specific finding that the Petitioners are in possession of the subject land. The Supreme Court overturned the order of this Court dated 30.08.2016 passed in W.P. (C) 1034/2015 and rejected the assertions of the Petitioners. The Supreme Court further upheld the contentions of Respondent No.1 to the effect that the acquisition proceedings, which have culminated in the Award No. 107/1986-87 dated 19.09.1986 have become final. The relevant findings of the Supreme Court are as under:-

“7. The High Court while passing the impugned judgment and order has observed that the possession of the land in question continued with the original writ petitioners and that the compensation was neither paid nor even tendered to the original writ petitioners. However, by holding that the original writ petitioners have continued to remain in possession, the High Court has relied upon the earlier order dated 09.11.2011 passed in writ petition No.7714/2011, by which the High Court directed the authority to consider their application under section 48 of the Act, 1894 on merits. However, it was the specific case on behalf of the authority before the learned Single Judge that the possession of the land in question was already taken over on 23.09.1986 and even the compensation amount of Rs.2.00 crores was deposited with the land and building department.

7.1 It is the case on behalf of the original writ petitioners that a purported letter dated 23.09.1986 allegedly taking symbolic possession was never disclosed by appellants in the proceedings conducted before

the High Court on two separate occasions and the same has been filed for the first time in the present proceedings. The aforesaid is not correct. Even in the impugned order itself in paragraph 2, the High Court has noted the submissions on behalf of the appellants to the effect that the possession was taken over on 23.09.1986. Therefore, it cannot be said such a plea is taken for the first time before this Court. It is the case on behalf of the original writ petitioners, relying upon the earlier order passed by the High Court dated 09.11.2011 in writ petition No.7714/2011 that, the original writ petitioners continue to be in possession and the actual possession has never been taken over. However, it is required to be noted that even in the order dated 09.11.2011, there was no specific finding given by the High Court that the original writ petitioners are in possession of the land in question. On the contrary, it is observed that the authority to consider the application under section 48 of the Act, 1894 on merits on the assumption of the possession being with the original writ petitioners. Therefore, while passing the order dated 09.11.2011 also, the High Court assumed the original writ petitioners are in possession hence as such no specific finding was given to the effect that the original writ petitioners are in possession.

- 7.2 *It is next contented on behalf of the original writ petitioners that the alleged possession on 23.09.1986 is illegal and it was a paper possession. However, it is submitted on behalf of the appellants that possession of land in question was taken over by drawing the punchnama which can be said to be sufficient compliance of the requirement while taking possession. The High Court has also doubted the compensation being tendered as contended on behalf of the appellant.*
- 7.3 *Be that as it may. Assuming for the sake of argument that the original writ petitioners are found to be in possession and the compensation was not tendered, in that case also as can be seen from the order passed by the High Court on 09.11.2011 in writ petition No.7714/2011, the authority was restrained from taking any coercive action in respect of the land in question. Therefore, in view of the subsequent decision of this Court in the case of **Indore Development Authority** (supra paragraph 366.8), the period, during which the interim order is/was operative, has to be excluded in the computation of five years' period. In the present case even, it is the contention on behalf of the original writ petitioners that the order of no coercive action was directed to be continued till the application under section 48 of the Act, 1894 was decided. It is the specific case on behalf of the original writ petitioners before this Court and even*

so stated in the written submissions that till date no decision is taken on the application under section 48 of the Act, 1894. Meaning thereby the direction/stay granted by the High Court while passing the order dated 09.11.2011 in writ petition No.7714/2011 continued when the Act, 2013 came into force.

- 7.4 *In that view of the matter and considering the decision of this Court in case of **Indore Development Authority** (supra), it cannot be said that the land acquisition proceedings are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013.*
8. *Applying the law laid down by this Court in the case of **Indore Development Authority** (supra), more particularly, paragraph 366, it cannot be said that the land acquisition proceedings are deemed to have lapsed.*
9. *In view of the above and for the reasons stated above and on the aforesaid ground alone that at the time when the Act, 2013 came into force there was a stay granted by the High Court vide order dated 09.11.2011 in writ petition No.7714/2011 restraining the authority taking any coercive action in respect of the land in question, the impugned judgment and order passed by the High Court declaring that the land acquisition proceedings are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013, is unsustainable.*
10. *In view of the above and for the reasons stated above, the present appeals are allowed. The impugned judgment and order passed by the High Court in Writ Petition (C)No.1043/2015 declaring that the land acquisition proceedings under the Act, 1894 with respect to the land in question are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013, is hereby quashed and set aside. The present appeals are allowed to the aforesaid extent, accordingly. There shall be no order as to costs.*

(Emphasis supplied)

20. The Supreme Court while arriving at the aforesaid findings referred to and relied upon the judgment of the Constitution Bench in **Indore Development Authority v. Manoharlal and Ors. (2020) 8 SCC 129**, more specifically paragraph 365 to 366 therein. Paragraph 366.7 and 366.8 therein are relevant for the present proceedings which reads as under: -

“366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 112014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.”

(Emphasis supplied)

21. Respondent No.1, DDA and Respondent No.3, GNCTD, before this Court in W.P. (C) 1034/2015 and before the Supreme Court have consistently asserted that the possession of the land was taken over by DDA on 23.09.1986 after following the due procedure including drawing of a *panchnama*. Respondent No. 1 further stated that thereafter a notification under Section 22 (1) of the Delhi Development Act, 1957 has also been issued on 06.10.1986. Therefore, in light of the finding of the Constitution Bench in ***Indore Development Authority*** (Supra) at paragraph 366.7 and the judgment of the Supreme Court dated 29.03.2022, the issue between the parties *qua* possession of the subject land is no longer *res integra*.

22. The Supreme Court upheld the contention of the Respondents that possession of the subject land was taken over on 23.09.1986 at paragraph nos. 7, 7.1 and 7.2 of the judgment and dealt with the contention of the Petitioners that they remained in possession as an alternate submission in paragraph nos. 7.3 and 7.4. However, the

Supreme Court in either situation held that the acquisition proceedings *qua* the subject land had become final and had not lapsed.

23. Notwithstanding the aforesaid keenly contested proceedings, which spanned from 2015 to 2022, the Petitioner has filed the present writ petition seeking an injunction against the Respondent No. 1 on the premise that their representation dated 21.10.2011 filed under Section 48 of the Act of 1894 is pending consideration. Pertinently, there is no prayer in the present writ petition seeking a direction to the Respondents to dispose of the said representation.

24. This Court is of the considered opinion that the contention of the Petitioner that its representation dated 21.10.2011 under the Act of 1894 continues to remain pending with Respondents till date is mischievous and incorrect. The legal proceedings in W.P. (C) No. 1034/2015, which ensued between the parties under the Act of 2013, before this Court and the Supreme Court, sufficiently evidence that both Respondent No.1 and Respondent No.3 asserted that the possession of the land had been taken over by DDA that the acquired land is required by the Respondents. In view of the said categorical stand of Respondents on possession of the subject land, the condition precedent for invoking Section 48 of Act of 1894 stood negated and the Petitioner were put to notice that their representation is not maintainable and non-est.

25. Further, the actions of both GNCTD and DDA in impugning this Court's order dated 30.08.2016 passed in W.P. (C) No. 1034/2015 by filing Special Leave Petitions sufficiently evidences that the concerned authorities were opposed to releasing the subject land from acquisition. The Petitioners' representation dated 21.10.2011 under Section 48 of

the Act of 1894, assuming was maintainable on the plea that possession is with the Petitioners, stood rejected by the affirmative stance of the concerned authorities in opposing the writ proceedings and impugning the order before the Supreme Court.

26. The contested litigation which ensued between the parties post 2011 sufficiently evidences that the representation of the Petitioner stood rejected by Respondents. The absence of a formal order communicating such a rejection to the Petitioner could not have led the Petitioner to believe that the said representation filed in 2011 was still pending in December 2022. The plea of the Petitioners that they believed that the said representation is still pending consideration with the Respondent after judgment of the Supreme Court is incredulous and shows scant regard for the said legal proceedings.

27. Even otherwise, there is no requirement for the Respondents to issue a formal order of rejection on the representation filed under Section 48 of the Act of 1894 and the rejection of the representation was apparent and writ large on the record of W.P. No. (C) 1034/2015. The Respondents in the said proceedings filed their counter affidavits asserting that the acquisition proceedings have become final and categorically disputing the title of the Petitioners as well as their *locus* to maintain the said writ. This Court is therefore of the opinion the representation dated 21.10.2011 cannot be said to be pending with the passing of the judgment dated 29.03.2022 by the Supreme Court.

28. The Petitioner filed several proceedings against the Respondents after 2011 but in none of them has it sought a direction to the Respondents to decide the representation dated 21.10.2011 under

Section 48 of the Act of 1894. The Petitioner has not filed with the writ petition any letters following up with Respondents for the decision of said representation. As noted above, in the present proceedings as well the Petitioner has not sought any direction for consideration of his representation. These circumstances also indicate that the Petitioner is aware that the Respondents have by their stand taken in the previous writ proceedings rejected the said representation. The filing of the present writ petition on the presumption that the representation is pending is therefore misconceived, if not an outright abuse of legal process.

29. This Court therefore holds that the representation dated 21.10.2011 was rejected by the Respondents as is evident from the stand taken by the said Respondents in their counter affidavits filed in W.P. No. (C) 1034/2015 opposing the reliefs sought in the said petition and the *locus* of the Petitioner. Further, in light of the categorical stand of the Respondents that the possession of the land was taken over by them on 23.09.1986 no application under Section 48 of the Act of 1894 was maintainable. In this regard, the judgment of the Supreme Court in ***Mandir Shree Sita Ramji alias Shree Sita Ram Bhandar v. Land Acquisition Collector and Others (2005) 6 SCC 745***, is apposite, wherein the Court held as under:-

“15. Even otherwise, we have seen the scheme sought to be relied upon. We find from the scheme that it only applies in respect of persons/agencies who own and possess the land. In this case possession of the land had already been taken. The scheme also categorically states that the scheme would not take away the rights of the Delhi Development Authority to acquire land for development of Delhi. Thus the scheme

was not applicable to the lands of the appellants. Even under Section 48 of the Land Acquisition Act once possession is taken, the Government cannot withdraw from the acquisition. We thus see no substance in this contention also.”

30. With respect to the plea of the Petitioners that they are in settled possession of the subject land, this Court is of the opinion that with the determination and adjudication of all pleas of the Petitioners in proceeding arising from W.P. (C) No. 1034/2015 and the decision of the Supreme Court dated 29.03.2022, the Respondents have followed the *due process of law* in establishing that the Petitioners have no right, title or interest in the property. The Supreme Court after duly examining the pleas of the Petitioners has rejected the same and held that the acquisition process is complete and consequently the title of the subject land vests in Government and possession with Respondent No.1, DDA (***Bal Bhagwan v. DDA, (2020) SCC OnLine Del 1630***).

31. The acquisition proceedings concluded in 1986 and the *lis* between the parties under the Act of 2013 also continued from 2015 till 29.03.2022. Ordinarily, the Petitioner should have itself vacated and peacefully handed over the possession of the subject land to the Respondent No.1 in compliance with the Judgment of the Supreme Court, however, the Petitioner by continuing its illegal occupation has not only shown willful disregard of the judgment dated 29.03.2022 but has abused the legal process by filing the present petition alleging that their application dated 21.10.2011 is pending and survives despite the judgment dated 29.03.2022. The Supreme Court in ***K.K. Modi v. K.N. Modi, (1998) 3 SCC 573***, has held as under: -

“44. One of the examples cited as an abuse of the process of court is

re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court.”

In view of the aforesaid, it is apparent to this court that the Petitioner is seeking to perpetuate its illegal possession of the subject land by filing the present proceeding.

32. In the pleadings, the Petitioner has raised a plea that the proposed demolition action of Respondent No.1 is impermissible in view of amendment in Delhi Law (Special Provision) Second Amendment Act, 2014. The said plea was not pressed during arguments. However, in view of Section 4 of The National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011, no reliance can be placed on said Act of 2014 for the reason that the subject land vests in DDA and is required by DDA for public purpose. Section 4 reads as under: -

“4. Provisions of this Act not to apply in certain cases — During the period of operation of this Act, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely:—

- (a) encroachment on public land except in those cases which are covered under clauses (a), (b) and (c) of sub-section (1) of section 3;***
- (b) removal of slums and Jhuggi-Jhompri dwellers, hawkers and urban street vendors, unauthorised colonies or part thereof, village abadi area (including urban villages) and its extension in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.”***

(Emphasis Supplied)

33. In view of the aforesaid facts and circumstances, there is no merit in the plea raised in the present petition and the same is dismissed with

costs of Rs.1 lakh payable to Respondent No.1 DDA. (*M. Nagabhushana v. State of Karnataka, (2011) 3 SCC 408*). All pending applications also stand disposed of.

34. Learned counsel for the Respondent has stated that no demolition action is proposed in Khasra No. 940/23 (3-9). The said statement of the Respondent No.1 is taken on record and therefore, no adjudication is required with respect to the claims made by the Petitioner with respect to the said parcel of land.

35. The Petitioners in view of the finality of Award No. 107/1986-87 after the judgment of the Supreme Court dated 29.03.2022 are encroachers and illegal occupants on the public land. They cannot be allowed to retain the possession of the subject land i.e. public land. The Petitioners must therefore vacate the subject land and peacefully hand over the vacant possession of the acquired land to the Respondents.

MANMEET PRITAM SINGH ARORA, J

JANUARY 04, 2023

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