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

+ **W.P.(C) 11895/2024**

CUSTODIAN OF EVACUEE PROPERTY

.....Petitioner

Through: Mr. Sanjay Kumar Pathak, Standing Counsel with Mr. Sunil Kumar Jha, Mr. M. S. Akhtar, Mr. Mayank Madhu and Ms. Mussarat B. Hashmi, Advocates with Mr. Tarun Nautiyal, ASO/L&B/ EP Cell.

versus

JASWANT SINGH NARAG (SINCE DECEASED) THROUGH HIS LRS & ORS.

.....Respondents

Through: Mr. Sunil Goyal, Mr. S. C. Chawla and Ms. Anita C. Narang, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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29.08.2024

CM APPL. 49513/2024(seeking exemption)

1. Exemption is granted, subject to all just exceptions.
2. The Petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the application stands disposed of.

W.P.(C) 11895/2024 & CM APPL. 49514/2024(seeking stay)

4. The present petition concerns land comprising of Khasra No. 291, 296, 297, 298, 305 and 314 of Masjid Moth, New Delhi, having Khewat Ne.



30/8/32, Masjid Moth, Delhi.¹ This subject property was put up for auction by the Competent Officer in 1956. Late Mr. Jaswant Singh, being a displaced person, submitted a bid of INR 1,30,000/- and 10% of bid amount in cash at the time of fall of hammer and was the successful auction purchaser. The balance auction money was allowed to be paid by way of adjustment out of claim compensation. Thereafter, late Mr. Jaswant Singh, the auction purchaser, offered his claim compensation along with his other associates. Provisional possession was given by the Department on 30th May, 1960 with effect from date of auction i.e., 14th September, 1956 and thereafter, actual possession of land was also given to him on 23rd July, 1960 by the department with effect from date of auction i.e, 14th September, 1956.

5. In the meantime, the subject property was acquired in 1963 on behalf of Delhi Development Authority² for Masjid Moth residential scheme for which notification under Section 4 of the Land Acquisition Act of 1894 was issued in 1957 and 1959, while the auction had taken place in 1956.

6. Subsequently, on 23rd February, 1970, notice was issued by Petitioner to Late Mr. Jaswant Singh, informing him that the balance auction money had to be paid, and failure would result in cancellation and forfeiture of earnest money. Subsequently, dispute arose with respect to claim compensation between Mr. Jaswant Singh and his associate Mr. Ganga Ram, whose claim compensation was to be adjusted towards the cost of the subject property. Late Mr. Jaswant Singh agitated the matter in respect of adjustments from Mr. Ganga Ram and filed an appeal before the Authorised

¹¹ "Subject property"

² "DDA"



Chief Settlement Commissioner,³ who through order dated 01st June, 1970, allowed the appeal and directed the balance payment of Mr. Ganga Ram to be adjusted in favour of Late Mr. Jaswant Singh towards the sale/ auction price of the subject property. The matter was then further agitated by the aggrieved party before this Court. On account of such *inter se* disputes between the auction purchaser and his associates, the whole claim compensation could not be adjusted against the auction price. In this background, when a request was made for the issuance of sale certificate, Petitioner raised an objection stating that since the land in question had been acquired in 1957 and 1959, and the subject property stood vested in Government, a sale certificate would not been issued. After considering this objection, the Competent Officer issued an order on 4th April, 2019, directing the Petitioner to issue the sale certificate for the property in question, provided that the legal heirs of the late Mr. Jaswant Singh furnish an indemnity bond to the extent of Rs. 1,00,000/-. Subsequently, the Competent officer *vide* order dated 2nd May, 2019 issued direction for execution of sale deed and the sub-registrar, Mehrauli was directed to file a compliance report within 15 days. Thereafter, the matter was carried up in revision under Section 15 of the Evacuee Interest (Separation) Act, 1951 before the Appellate Officer [District Judge-01 (Central), Tis Hazari Court, Delhi], who *vide* order dated 16th May, 2024 modified the order of the Competent Officer to the following effect:

“22. Keeping in view the aforesaid, the present revision petition is partly allowed and the order dt 04.04.2019 is modified to the extent that in addition to the furnishing of the indemnity bond to the extent of Rs 1 Lakh by the LR's of Late Sh Jaswant Singh and also subject to the deposit of

³ “ACSC”



amount outstanding as recorded vide order dt 15.12.2003 i.e. 14,626.89/- towards principal together with interest @ 12% per annum w.ef 15.12.2003 till date, towards the shortfall in auction sale price, with the office of DDO, (E P Cell), Vikas Bhawan, ITO, New Delhi, sale certificate pertaining to the suit land in question be issued in favour of the LR's of Late Sh Jaswant Singh in terms of order dt 04.04.2019, 02.05.2019 as modified vide order dt 17.10.2019. As stated in the order dt 04.04.2019 and as clarified by the Hon'ble Supreme Court of India in the matter of Saraswati Devi (dead) by LR vs Delhi Development Authority & Ors, the applicants claim for compensation; refund or any other monetary claim not decided vide order dated 04.04.2019 shall be considered and/or decided on its own merits in accordance with law and the present order nor the order dated 04.04.2019, 02.05.2019 as modified vide order dt 17.10.2019 shall have any bearing in relation to such claims. ”

7. Aggrieved by the order dated 16th May, 2024, the Petitioner has preferred the present petition under Article 226 of the Constitution of India setting aside of the said order as well as orders dated 4th April, 2019 and 2nd May, 2019.⁴

8. Mr. Sanjay Kumar Pathak, Standing Counsel for Petitioner, makes the following submissions:

8.1 The direction for issuance of sale certificate is illegal and without jurisdiction since only certain parts of the payment and not the entire sales consideration/ auction price has been paid by the Respondents. In light of the same, the rights of the auction purchaser had not matured to claim any ownership on the land. Moreover, the Indemnity bond, as directed to be furnished by the Competent Authority cannot be substituted in place of actual payment of auction purchase amount.

8.2 The provisions of the Delhi Land (Restriction on Transfer) Act, 1972 restricts transfer of the land after acquisition proceedings have been initiated. In the present case not only had the land been acquired but even



the possession of the land had been taken by the acquiring authority. Thus, once the land is acquired and possession is transferred to the government, free of any encumbrances, a sale certificate can no longer be issued.

9. The Court has heard the counsel for the parties. The aforementioned contentions, as urged, were considered by the Appellate Officer and rejected. It must also be noted that in the Impugned order dated 16th May, 2024, apart from taking note of the findings of Competent Officer, there is a critical finding against Petitioner that at no point of time the auction sale was sought to be cancelled or avoided by the Petitioner. In fact, even after the date of acquisition, Petitioner has continuously called upon Respondents to make the payments towards the sales consideration. To this effect, it is critical to note that in the proceedings before the Competent Officer on 15th January, 2015, the following order was passed:

“Custodian vs. Jaswant Singh

15.1.2015

*Present: Ld. Counsel for claimant.
Ld. Counsel for custodian department.
Ld. Counsel for custodian department submits that department has no objection in issuing the sale certificate if the claimant informs how much amount has to be paid by him. Ld. Counsel for claimant submits that vide order dt. 15.12.2003. Ld. Predecessor of this court mentions in the said order that there is shortfall of Rs.14,626/- towards the sale price.*

Heard.

In order dt. 15.12.2003 Ld. Predecessor specifically mentioned about the shortfall in the sale consideration amount. Now custodian department is directed to give the details of payment received by them and balance amount.

Put up for further proceedings on 19.2.2015.

(Charu Aggarwal)

⁴ Collectively referred to as “Impugned orders”



*SCJ-cum-RC/Central/Delhi
15.1.2015"*

10. The aforementioned order clearly indicates that the Petitioner has at least up to 2015 never sought to avoid the sale. Moreover, in this case, the focus is on the entitlement to the proceeds of the acquisition, rather than on the transfer of the property itself. To that effect, this Court finds no infirmity in the view taken by the authorities below. Given that the Petitioner has consistently attempted to enforce the auction contract by urging the Respondents to pay the final consideration and the fact that an explicit statement of no objection to the issuance of the sale certificate was given by the Petitioner, the Court finds no infirmity in the view taken in the Impugned orders.

11. Issuance of sale certificate, as already observed above, would not amount to transfer of the subject property in favour of Respondents as the subject property has concededly been acquired by the Government. To that effect, objections under Section 3 of the Delhi Lands (Restrictions on Transfer) Act, 1972 would also not be attracted. The instant case is only with respect to the issuance of sale certificate which would entitle Respondents, as noted above, for the proceeds under the land acquisition proceedings.

12. In view of the above, the Court finds no merit in the present petition.

13. Dismissed.

SANJEEV NARULA, J

AUGUST 29, 2024

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