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

+ **EX.F.A. 32/2024**

SH. RANDHIR SINGH

.....Appellant

Through: Mr. Manish Vats and Mr. Hemant
Vats, Advs.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Sanjay Kumar Pathak, SC with
Mr. Sunil Kumar Jhaa and Ms.
Musarrat Benazeer Hasmi, Advs. for
R-1
Mr. Sangeeta Bharti, SC with Mr.
Lokesh Malik and Mr. Shreesh
Pathak, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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20.11.2024

1. The instant execution first appeal is preferred against the order dated 10.07.2024 passed by the learned District Judge, Tis Hazari Court, Delhi.
2. The facts of the case would indicate that the appellant was the owner of the land bearing Khasra No. 119.16.1 (3-12) situated in Village Mundka, Delhi (hereinafter referred to as the '*Suit Property*'). In pursuance of an acquisition award, the appellant was granted a lump sum compensation of Rs 17,58,400/- per acre. Aggrieved by the compensation amount, a reference was preferred under Section 18 of the Land Acquisition Act, 1894 wherein, *vide* order dated 12.12.2018 the compensation amount was fixed at Rs.



25,99,110/- per acre.

3. In the execution of order dated 12.12.2018, the appellant received a sum of Rs.19,57,500/- on 16.08.2019. On receiving the said amount, the appellant, thereafter, filed a second execution petition claiming the deficient amount with an interest rate of 9 per cent per annum under Section 28 of the Land Acquisition Act, 1894 from the date of dispossession or the date of award, whichever is earlier, till the expiry of one year and thereafter, with an interest, at the rate of 15 per cent per annum. The said execution petition was dismissed *vide* order dated 10.07.2024. Aggrieved by the same, the appellant preferred the instant appeal.

4. Learned counsel appearing for the appellant argued that the compensation amount has been paid in the previous execution proceedings calculating interest at the rate of 9 per cent per annum from 04.03.2009 to 03.03.2010 and further interest at the rate of 15 per cent from 04.03.2010 to 03.06.2009.

5. Learned counsel for the appellant further argued that the date of interest was wrongly calculated from 04.03.2009 instead of the date of dispossession i.e. 20.12.2006. In addition, he submits that even otherwise, the appellant is entitled to continue the present execution proceedings on the basis of the award itself, as the same contemplates the date of dispossession as the date of the award.

6. *Per contra*, the learned counsel appearing for the respondent vehemently opposed the submission made on behalf of the appellant on the ground that additional payment is unjustified, and the appellant has received full and final payment as per order dated 12.12.2018. He further argued that the appellant had wrongly calculated the interest amount by including



additional days and applying a higher interest rate than permissible eventually leading to an overestimation of the lumpsum amount.

7. I have considered the submissions made by learned counsel for the parties and perused the record.

8. The impugned order in paragraph nos.8 to 10 deals with the aforesaid submissions, and the Executing Court records that as per the pleadings, as well as from the judgment of the Court, the date of taking over the possession is not discernible. The Court, therefore, took into consideration the document namely, 'Kabja Karwai', wherein, the date of possession has been shown to be as 04.03.2009. The relevant paragraphs of the Executing Court's decision read as under:-

"8. I have perused the 'Kabja Karwai' document which is prepared in the presence of officials of Land & Building and Delhi Jal Board at the time of taking possession of property and by way of which the possession has been taken by the Land & Building Department and thereafter handed over to Delhi Jal Board. As per this document the possession of the property of the DH has been taken on 4.3.2009. During execution proceedings, DH was directed to file affidavit regarding the date of possession of property taken from him by the government but he filed evasive affidavit by mentioning that as per award dated 4.12.2006, the possession of his property has been taken on 20.12.2006. The DH has not mentioned in affidavit as to what date possession was taken as per his knowledge. The pleadings of the parties in main reference petition are totally silent regarding the date of possession of acquired land and even judgment and decree is also silent regarding the date of possession of the acquired land. The award and Naksha Muntjain are the documents which are prepared on the basis of document Kabja Karwai. Kabja Karwai is the main document which proves as to on which date the possession was taken by the government. As the pleadings, as well as judgment of the court is silent about the date of possession, the court can take document Kabja Karwai into consideration for resolving the dispute as to the date of possession. This court also finds force in the submissions of ld. Counsel for the JD that inadvertently wrong date has been mentioned in award and Naksha Munjtamin. In the earlier execution petition the compensation amount was paid to the DH on the basis of date of possession 4.03.2009 and that date was never disputed by the DH in



the previous execution petition. The DH has not taken any objection while receiving compensation amount from the court. The previous execution petition has been disposed off as satisfied after releasing payment to the DH vide order dated 16.08.2019.

Explanation VII of Section 11 of CPC states as under:

"Explanation VII- The provision of this section apply to a proceedings for the execution of a decree and reference in this section to any suit, Issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree".

9. *The Hon'ble Supreme Court of India in a case titled-Dipali Biswas & Ors. Vs Nirmalendu Mukherjee & Ors Civil Appeal no. 4557 of 2012 and in case titled Sita Ram Vs Devi Dayal decided on 5.12.1968 4(1968) DLT 266 has held that the provision of section 11 CPC is applicable to the proceedings of execution of a decree.*

10. *The previous execution petition of the DH has already been disposed off as satisfied so DH has no right to file new execution petition by taking new plea for the execution of same judgment and decree as per section 11 of CPC. In view of the above said facts and observations, it is held that the present execution petition is barred by section 11 of CPC."*

9. It was, thus, found that when the earlier execution proceedings came to be filed and the awarded amount was received by the Decree Holder, the same was disposed of *vide* order dated 16.08.2019 and the appellant, admittedly, did not raise any objection either with respect to the date of dispossession or with respect to his further entitlement.

10. The Executing Court rightly held that the previous execution petition has already been disposed of as satisfied so the appellant has no right to file a new execution petition by taking a new plea for the execution of the same judgment and decree on same grounds as per Section 11 of CPC.

11. In view of the aforesaid, this Court does not find any illegality or impropriety in the impugned decision and accordingly, the instant appeal is



hereby dismissed.

PURUSHAINdra KUMAR KAURAV, J
NOVEMBER 20, 2024/MJ