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

\+ LPA 1050/2024, CAV 520/2024, CM APPL. 61565/2024, CM APPL. 61566/2024

CUSTODIAN OF EVACUEE PROPERTY .....Appellant

Through: Mr. Sanjay Kumar Pathak, Standing Counsel with Mr. Sunil Kumar Jha, Ms. Mussarrat B. Hashmi & Mr. Sami Sameer Siddiqui, Advocates.

versus

SHRI JASWANT SINGH NARAG SINCE DECEASED THROUGH HIS LRS SMT. DALBIR NARAG & ORS. .....Respondents

Through: Mr. Sunil Goyal, Mr. Satish Chawla, Ms. Anita Chawla Narang, Mr. Nitin Kala & Mr. Anuj Sharma, Advocates.

% **Date of Decision: 21st October, 2024**

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present appeal has been filed under Clause X of the Letters Patent Act, 1866 against the order dated 29th August, 2024 passed by a learned Single Judge in W.P.(C) No.11895/2024, arising out of the order dated 16th May, 2024 passed by the Appellate Officer, District Judge-01 (Central District), Tis Hazari Courts, Delhi in Revision Petition being MCA DJ No. 77/2019 titled *"Custodian of Evacuee Property & Anr. vs. Jaswant Singh Narag (now deceased) Thr. Lrs."* filed under Section 15 of the Evacuee Interest (Separation) Act, 1951 arising out of the orders dated 4th April,

2019 and 2nd May, 2019 in CEP No. 16/2016 passed by the Competent Officer, SCJ-Cum-RC (Central), Tis Hazari Courts, Delhi, whereby the learned Single Judge has dismissed the underlying writ petition of the appellant finding no infirmity in the view taken by the authorities below.

2. Facts culled out from the impugned order, are enumerated hereunder:-

2.1 The underlying writ petition concerns land comprising Khasra Nos.291, 296, 297, 298, 305 and 314 of Masjid Moth, New Delhi, having Khewat No. 30/8/32, Masjid Moth, Delhi. The 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 the 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.

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

2.3 Subsequently, on 23rd February, 1970, notice was issued by appellant/Custodian Department 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 Chief Settlement Commissioner, 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.

2.3 In this background, when a request was made for issuance of sale certificate, the appellant/Custodian Department 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 cannot be issued. After considering this objection, the Competent Officer issued an order on 4th April, 2019, directing the appellant/Custodian Department to issue the sale certificate for the property in question, provided that the legal heirs of 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.

2.4 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. It was directed that in addition to furnishing of the indemnity bond to the extent of Rs.1 Lakh by the legal heirs of late Mr. Jaswant Singh, and also subject to the deposit of amount outstanding as recorded *vide* order dated 15th December, 2003 i.e., Rs.14,626.89/- towards principal together with interest @ 12% per annum *w.e.f.* 15th December, 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 legal heirs of late Mr. Jaswant Singh, in terms of orders dated 04th April, 2019 and 02nd May, 2019 as modified *vide* order dated 17th October, 2019.

2.5 It was further observed therein that the applicant's claim for compensation, refund or any other monetary claim which may not have been decided *vide* order dated 04th April, 2019, shall be considered and/or decided on its own merits in accordance with law and the present order nor the orders dated 04th April, 2019 and 02nd May, 2019, as modified *vide* order dated 17th October, 2019, shall have any bearing in relation to such claims.

2.6 Aggrieved by the order dated 16th May, 2024, the appellant/Custodian Department had preferred the underlying writ petition which culminated into present appeal challenging the impugned order dated 29th August, 2024.

3. Mr. Sanjay Kumar Pathak, learned counsel for the appellant states that the appellant had, by the communication/notice dated 23rd February, 1970, directed the respondent- Late Sh. Jaswant Singh to deposit the

balance amount within fifteen (15) days which the respondent failed to comply with. He states that as the balance auction price was not deposited despite notice, the Sale Certificate could not be issued. He relies upon Rule 90(15) of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 (for short "*DP (C&R) Rules 1955*") to submit that the Managing Officer can issue a sale certificate only upon the realisation of the purchase price in full. Such balance amount not having been paid within fifteen (15) days of the aforesaid notice, no right accrues to the respondent to demand sale certificate.

4. He further states that as per Rule 90(11) of the DP (C&R) Rules, 1955, it was incumbent upon the respondent to produce the Settlement Commissioner Treasury Challan in proof of deposit of balance money. This period of fifteen (15) days could only be extended by the Chief Settlement Commissioner. Since no such communication emanating from the Chief Settlement Commissioner has been placed on record by the respondent evidencing extension of time for deposit, the respondent is not entitled to issuance of sale certificate. He states that the respondent deposited the balance money admittedly only on 12th June, 2024. According to him, the learned Single Judge overlooked this provision of law causing prejudice to the appellant.

5. He states that in any case, the subject land was already acquired by the Central Government and handed over to the Delhi Development Authority (for short *"DDA"*), free from all encumbrances, even before the sale certificate was issued, thus no right, title or interest enures to the respondent *qua* the subject land. He further states that the learned Single Judge did not examine the issue that once the land was acquired, the Competent Officer as also the Appellate Officer lost their jurisdictions to

pass any order in connection therewith. According to him, at best, it could only be the Civil Court/Reference Court under the LA Act, which could possibly exercise jurisdiction. Such being the case, learned Single Judge could not have passed the impugned judgement.

6. Dilating further, he refers to various provisions of the Delhi Land (Restriction on Transfer) Act, 1972 with respect to prohibition and regulation of transfer of lands once the same are acquired under the LA Act or any other similar Act. Thus, he states that when the subject lands were acquired in the year 1963, there could be no transfer of interest in such lands to the respondent by way of issuance of sale certificate, that too, after such a great lapse of time. He also states that the Central Government, being the admitted owner, post acquisition, the Custodian Department did not have any jurisdiction to issue a sale certificate. In such circumstances, he states that the learned Single Judge erred in passing the impugned judgement.

7. He states that the reliance upon the judgement of the Supreme Court in ***Saraswati Devi v. DDA, (2013) 3 SCC 571*** by the authorities below is completely misplaced. He states that in that case, the appellant had paid the entire balance amount whereafter a sale certificate was issued. He states that even in that case, the challenge to acquisition proceedings at the behest of the appellant was rejected.

8. He also states that once the respondent did not deposit the balance amount within fifteen (15) days period as directed *vide* communication dated 23rd February, 1970, the amount paid earlier was liable to be forfeited.

9. Learned counsel for the appellant also states that the note generated

in the year 2003 by the appellant Department disclosing the shortfall of Rs. 14,626/- or the submission made in the year 2015 by the officials of the appellant before the Competent Officer with respect to giving no objection in issuing sale certificate in case balance amount auction price is paid, is concerned, was made on wrong impression and in ignorance of the factual and legal position. He states that post acquisition, the Custodian Department can no longer issue any sale certificate. He thus prays that the impugned judgement be set aside and consequentially, the orders of the Authorities below be also quashed.

10. *Per contra,* learned counsel appearing for the respondents vehemently opposes the submissions of the appellant. He reiterates the reasoning and findings rendered by the learned Single Judge generally. He relies upon and read the relevant paragraphs of ***Saraswati Devi*** *(supra)* extensively to state that the present case is identical on facts and the ratio laid therein would be applicable. He emphasises that in any case, it is only for the purpose of compensation alone that the issuance of sale certificate would be relevant. He also states that the aspect of *inter se* disputes between the associates of the respondent has no concern with the issuance of sale certificate in the present case, particularly when the respondent has already paid the balance auction amount.

11. He also relies upon the statement of the officers of the Custodian Department made before the Competent Officer, pursuant to which the balance auction amount was deposited to state that the appellant has by its conduct lost the right to refuse the sale certificate. He states that the appeal be dismissed with costs.

12. After having heard the learned counsel for the parties, considering

the impugned judgement and examined the record, this Court is of the considered opinion that the impugned judgement calls for no interference.

13. It is undisputed that despite the notice dated 23rd February, 1970, the appellant raised demands and ostensibly received the payments too. It is also undisputed that the officials of the appellant Department also appeared before the Competent Officer on 15th January, 2015, and gave a statement that the said Department has no objection in issuing the sale certificate if the respondent informs the amount that stands paid by it till date. It was specifically noted in the order that the predecessor of that Court, *vide* the order dated 15th December, 2003, had noted a sum of Rs.14,626/- as the shortfall towards the sale price. Consequent upon such statement, the Competent Officer had directed the appellant to give details of the payment received by it and the balance amount. It is apparent from the above, and as noted by the learned Single Judge that the appellant has at least, till the year 2015, never sought to avoid the sale.

14. It is also undisputed that the appellant challenged the orders dated 4th April, 2019 and 2nd May, 2019 issued by the Competent Officer directing issuance of sale certificate by way of revision petition before the Appellate Authority which too was rejected *vide* the order dated 16th May, 2024. Consequent thereto, the balance auction amount was also deposited by the respondent on 12th June, 2024, by way of demand draft.

15. It is apparent that the appellant despite issuing the communication dated 23rd February, 1970 accepted payments and issued further communication in the year 2003 demanding the balance auction price from respondent. Besides, the officials of the appellant gave a specific statement of the Department having no objection to the issue of sale certificate on the

remaining amount being paid before the Competent Officer on 15th January, 2015. Thus, the argument that the respondent was precluded from seeking issuance of sale certificate for not complying with the notice dated 23rd February, 1970, in terms of the Rules is untenable. The appellant would also be bound by observations made by the Competent Officer in the order dated 15th January, 2015 which also notes the shortfall in amount which was recorded in the order dated 15th December, 2003, by the predecessor of the Competent Officer.

16. The argument predicated on the acquisition of the subject land by the Central Government in the year 1963, even before the balance sale consideration was paid, thus impeding issuance of sale certificate by the appellant is untenable. The issuance of sale certificate is not for the purposes of annulling the land acquisition proceedings or for putting the respondent in possession of the subject land, but for the purposes of compensation, if any, which the respondent may be found to be entitled to. This would be the natural consequence of the ratio of the judgement in ***Saraswati Devi*** *(supra)* if applied to the facts of this case. In that case, the Supreme Court was examining the challenge to land acquisition proceedings made by one Saraswati Devi, in the facts which are similar to those obtaining in the present case. During such consideration, the Supreme Court examined the effect of Rule 90 of the DP (C&R) Rules 1955 and while dismissing the challenge to the land acquisition proceedings, ultimately observed at the end that the appellant therein would be entitled to claim compensation and that the dismissal of the said appeal would not come in her way. The observation in para 49 of ***Saraswati Devi*** *(supra)* is extracted hereunder:

"49. It is, however, clarified that the appellant's claim for

> *compensation, refund or any other monetary claim shall be considered and/or decided on its own merits in accordance with law and the present judgment shall have no bearing in relation to such claim."*

17. It is manifest that the Supreme Court in ***Saraswati Devi*** *(supra)* while dismissing the challenge to the land acquisition proceedings ultimately held that such dismissal would not impede the rights, if any, of Saraswati Devi to seek compensation etc., *qua* the land on account of it being acquired under the LA Act. Evidently, the Supreme Court did not find any fault with the issuance of sale certificate for which the balance auction price was paid much after the land was acquired. Similarly, the sale certificate in the present case too cannot be refused or questioned by the appellant.

18. Moreover, this Court finds that the learned Single Judge had refused to interfere with the orders passed by both the Competent Officer and the learned Appellate Authority and limited the issuance of sale certificate only to the compensation, if any, that the respondent may be found entitled to. In view of the facts in this case as also following the judgement in ***Saraswati Devi****(supra)*, this Court does not find any merit in the appeal.

19. Resultantly, the appeal with pending applications, if any, is dismissed. No order as to costs.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

OCTOBER 21, 2024/*rl*