



2025:DHC:745-DB



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

% **Date of Decision: 31st January, 2025**

+ **WP(C) 11854/2018 CM APPL. 45889/2023**

SH. DHANRAJ SINGH JAIN & ANRPetitioners

Through: Mr Rana Ranjit Singh, Mr Vivek K Singh, Mr Ravish Singh, Ms Akanksha Singh, Mr Abhilash Tripathy and Ms Sweta Singh, Advocates

versus

UNION OF INDIA & ORS.Respondents

Through: Mr Sanjay Kumar Pathak, SC, Mr Sunil Kumar Jha, Mr M S Akhtar, and Mr Mayank Madhu, Advocates for LAC/R1&R3

CORAM:

HON'BLE MR. JUSTICE VIBHU BHAKRU

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J

1. Present petition has been filed under Article 226/227 of the Constitution of India, 1950 praying that directions be issued to the respondents to put the petitioners back in possession of the excess land admeasuring 2 bighas 1 biswa, which was taken in possession by the respondents on 06.03.2003 without due process of law. Alternatively, the petitioners prays that the respondents be directed to compensate the petitioners for their land admeasuring 2 bighas 1 biswa taken by the respondents as per the existing market rate/ circle rate/ value of the land



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prevailing as on date.

2. The petitioners' case is that the petitioners are the bhumidhars of land against Khata No. 13/13 Khatuani No. 18 bearing Khasra No. 429/61/3 (5-00), 429/61/1/2/2 (2-5), total 7 bighas 5 biswas, situated in the revenue estate of village Azadpur, Delhi. The area of 1 bigha 8 biswas out of Khasra No. 429/61 min (7-5) was notified for acquisition under Section 4 of the Land Acquisition Act, 1894 (hereinafter *the LA Act*) vide notification dated 19.08.1992. The government issued a further notification dated 16.08.1993 under section 6 of the LA Act, confirming the acquisition of land for the purpose of construction of Road No. 51 (to join the outer ring road with the G.T. Karnal Road). The government further issued the notices under section 9 & 10 of the LA Act to the interested persons and on receipt of said notices, the deceased father of the petitioners had filed his claim for compensation making a demand of Rs. 25,000/- per sq. yards. An award was announced on 14.09.1995 and the claim of the petitioners was recorded at SL. No. 314 of claims in the Award.

3. The petitioner's case is that upon personal visit of the petitioners it was found that the total land measuring 3 bighas 9 biswas belonging to the petitioners was taken into possession instead of the awarded/ acquired land admeasuring 1 bigha 8 biswas, thereby 2 bigha 1 biswa (hereinafter referred to as "*excess parcel of land*") excess parcel of land was taken into possession by the government. Since, no efforts were made by the respondents for fresh demarcation, the petitioners filed a writ petition bearing W.P.(C) No. 8005/2012. *Vide* order dated 20.12.2012, this Court had directed the respondents to carry out fresh demarcation and verify if



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any excess parcel of land has been acquired and further directed that if excess parcel of land has been taken in possession, then appropriate proceedings should be initiated under the LA Act, so that the petitioner gets compensation for the excess land. Pursuant thereto, demarcation was carried out on 09.07.2013. It would be apposite to extract the demarcation report.

*“GOVT. OF NCT OF DELHI
OFFICE OF THE SUB-DIVISIONAL MAGISTRATE MODEL TOWN:
DELHI
NEAR NDPL OFFICE AZADPUR FLYOVER, DELHI -33*

No. F.654/SDM/MT/2013/94

Dated: 09.07.2013

To,

The Land Acquisition Collector (North),

1, Kripa Narain Marg, Delhi – 54

Sub: forwarding of Demarcation report of Kh.No.429/61/2+3, Village Azadpur, Delhi.

Sir,

In compliance of the Hon'ble High Courts of Delhi orders in suit No. WP(c) 8005/2012 titled as Sh Dhanraj Singh & Anr V/s Union of India & Others the demarcation of the Kh. No. 429/61/2+3 has been carried out through TSM by M/s Measure Techio Services, C-5/2, Sect-5, Rohini, Delhi-85.

As per the report of demarcation approximately, 3 Bigha 9 Biswa land falls in the road. The detailed report of Surveyor is enclosed herewith.

This is for your information and necessary action please.

Yours faithfully

sd/-

(VINOD DHATRAWAL)

TEHSILDAR: MODEL TOWN

DELHI”

4. Despite the demarcation report, the respondents did not take any consequential action either to release the excess parcel of land or acquire it under the provisions of the LA Act in force at the relevant time. After having waited for several years and pursuing the department relentlessly,



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lastly *vide* the letter dated 04.09.2018, the petitioners sought release of compensation or return of the excess parcel of land, though in vain. Due to inaction on the part of the respondents, the petitioners were constrained to file the present writ petition.

5. Mr. Ranjit, learned counsel for the petitioners states that in the present case, the facts occurring till demarcation report and the demarcation report itself has not been disputed by the respondents. He states that the excess parcel of land which was taken possession of by the respondents was not acquired in accordance with law. He states that the respondents being State cannot deprive a citizen of his constitutional right except in accordance with law. Resultantly, the respondents can either return the land illegally taken possession of or acquire the same in accordance with law and release compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter *the Act, 2013*). He relies on the judgement of Jammu & Kashmir and Ladakh High Court in ***Amina Begum vs. State of J and K & Ors***; LPA No.105/2019 decided on 27.10.2022 and a judgement of this Court in ***M/s. M.C. Agarwal HUF vs. M/s. Sahara India & Ors.; 2011 SCC OnLine Del 3715***. He also submits that the petitioners would also be entitled to some form of compensation from 06.03.2003, when the possession of the excess parcel of land was taken over by the respondent till date.

6. *Per contra*, Mr. Pathak, learned Standing Counsel at the outset submits that since the excess parcel of land in question falls under the built up flyover, it may not be possible for the respondents to restore the said land to the petitioners at this stage. Thus, he states that this Court



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may only examine whether prayer (b) of the writ petition can at all be considered.

7. Learned counsel raises a preliminary objection that the petitioners have approached this Court after a long delay and the present petition ought to be dismissed on account of insurmountable delay and laches. He states that no compensation is required to be paid, since the petitioners did not approach this Court even after the demarcation reported dated 09.07.2013 for atleast 6 years thereafter. That apart, he states that even if the petitioners are entitled to compensation for the period with effect from 06.03.2003, the same would be in nature of damages. Dilating further he states that it is trite that damages can be claimed only by adducing proof thereof by way of a Civil Suit inasmuch as such cases would have complex and disputed questions of fact. On the issue of the respondents acquiring excess parcel of land in question and paying compensation under the LA Act is concerned, he submits that the same can only be done with effect from 19.12.2013, when the Act, 2013 came into force. According to him, the market rate of excess parcel of land in question can be reckoned as on 19.12.2013.

8. He further submits that this Court needs to examine the issue on the basis of equity since the petitioner is also at fault in not having pursued his remedies in accordance with law at the relevant time or at the appropriate stage. Mr. Pathak, learned Standing Counsel has vehemently contested the submissions of the petitioners and has tried to predicate his arguments on the basis of the decisions of this Court in *Shanti Devi vs. Land Acquisition Collector (North) & Others: W.P.(C) 3163/2013* decided on 11.10.2019; *Shamo Devi & Ors. vs. Union of India & Ors.:*



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W.P.(C) No. 1839/2008 decided on 07.03.2008 and Supreme Court in **R.L. Jain(D) by LR.s. vs. DDA and Others; (2004) 4 SCC 79.**

9. From the submissions of the learned counsel for the parties and after examining the material available on record, particularly, the demarcation report dated 09.07.2013, there is no cavil that the parcel of land in question was never acquired by the respondents in accordance with the provisions of the LA Act. Though, the right to property is no more a fundamental right yet it has been held to be a Constitutional Right by the Supreme Court in **Bishambher Dayal Chandra Mohan & Others v. State of Uttar Pradesh & Others; (1982) 1 SCC 39** (See also: **Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors.; (2013) 1 SCC 353**). The relevant paragraph of **Tukaram Kana Joshi (supra)** is extracted hereunder:-

“9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide Lachhman Dass v. Jagat Ram [(2007) 10 SCC 448] , Amarjit Singh v. State of Punjab [(2010) 10 SCC 43 : (2010) 4 SCC (Civ) 29] , State of M.P. v. Narmada Bachao Andolan [(2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875 : AIR 2011 SC 1989] , State of Haryana v. Mukesh Kumar [(2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769 : AIR 2012 SC 559] and Delhi Airtech Services (P) Ltd. v. State of U.P. [(2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673 : AIR 2012 SC 573])”

10. Predicated on the ratio held by the Supreme Court in these judgments, it is manifest that no one can be deprived of the property save by authority of law. That said, we proceed to examine the case on its merits.



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11. The records available unequivocally disclose that alongwith the area 1 bigha 8 biswas, which was acquired by the respondents *vide* notification no.F-7(8)/84/L&B 9(i) dated 19.08.1992, an area of 2 bigha 1 biswa was also taken possession of by the respondents. The demarcation report dated 09.07.2013, issued pursuant to the order dated 20.12.2012 passed by this Court in W.P.(C) 8005/2012, undeniably discloses that the said parcel of land in question, formed excess land which was not notified. Clearly the said parcel of land in question could not have been taken acquired by the respondents and thus, the said possession was clearly beyond the purview of law and we hold so.

12. Consequent to the aforesaid conclusion, this Court would need to examine as to what would be the effect of such illegal possession of the said parcel of land. We have no doubt whatsoever that the State does not have any unbridled or unfettered rights to take forcible possession of a property admittedly belonging to its citizens. The deprivation of the enjoyment of the excess parcel of land in question by the State itself would entail, in our opinion, two consequences. One, the State would need to rectify the error and initiate acquisition proceedings in respect of the excess parcel of land in question followed by all the justifiable compensation available to the petitioners in accordance with the relevant Land Acquisition Act; and two, the State would have to fairly and reasonably compensate the petitioners of the deprivation of enjoyment of the parcel of land in question from the time it was illegally taken possession of, that is 06.03.2003, till the date the subject land is acquired.

13. Having reached the above conclusion that the parcel of land in question was illegally taken possession of by the State/respondents on



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06.03.2003, we are of the considered opinion that the petitioners ought to be paid compensation/damages with effect from the said date till the date of acquiring the said land. The question to be considered in this regard would be as to the quantum and the date with effect from which such compensation/damages ought to be granted.

14. In our considered opinion, the benchmark for such ascertainment or determination is already set out in the award dated 14.09.1995, passed by the Collector in respect of 1 bigha 8 biswa of land as duly notified and acquired in accordance with law. Records reveal that the lands were acquired @ Rs.96,875 per bigha. Since there is already an ascertained, verified and legally quantified compensation, we need not look for an exemplar in the form of sale deeds etc. to come to a firm conclusion. The Collector can determine the compensation as a fair return on the said value. So far as the duration is concerned, it is not disputed that the excess parcel of land in question was taken possession of *vide* the kabza karwai (possession proceedings) on 06.03.2003. It is also not disputed that the said excess parcel of land in question has not been released to the petitioners till date. In that view of the matter, we consider it apposite to direct the concerned Collector to determine the compensation in keeping in mind the parameters set out above by us.

15. In case the petitioners are not agreeable to the compensation as determined by the Collector, the petitioners would be at liberty to institute appropriate proceeding in a Court of competent civil jurisdiction for claiming damages, in accordance with law.

16. The aforesaid view of ours is also fortified by the ratio laid down by the Supreme Court in ***R.L. Jain (supra)***, particularly para 18 which is reproduced hereunder:



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18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.”

17. So far as the issue of acquisition of the parcel of land in question is concerned, the Act 2013 came into force with effect from 19.12.2013, repealing the LA Act, yet, saving the general application of the section 6 of the General Clauses Act, 1897 with regard to the effect of repeals. Learned counsel for the respondents had contended that the market value of the parcel of land in question may be reckoned with effect from the date when the Act, 2013 came into force i.e. 19.12.2013. According to learned counsel determination of the market value as in the year 2025 may amount to windfall for the petitioners and considering the equitable jurisdiction, this Court may direct valuation of the parcel of land in question to be reckoned as on 19.12.2013. We are not persuaded by this argument and find no merit in it. There is little doubt that the respondents had no right, authority or jurisdiction to take possession of land of a citizen except in accordance with law established under the Constitution. Nothing has been placed on record even today as to why and for what reason the market value of the said parcel of land in question must be reckoned as on 19.12.2013. It is obvious that the notification for



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acquisition of the parcel of land in question would be issued by the respondents post our judgment. Thus, we find neither logic nor any rationale as to why the market value of the said parcel of land in question should not be reckoned as on date. We hold so.

18. In order to obviate the delays which may occur in case the proceedings under the Act, 2013 for acquisition of the parcel of land in question is undertaken, and having regard to our anxious consideration on this question, we are of the opinion that keeping in view the peculiar facts in this case the respondents need not exercise provisions of sections 4 to 10, 12, 15 and 19 of the Act, 2013. We direct that the provisions of section 26 of the Act, 2013, empowering the Collector to determine the market value of the excess parcel of land in question may straightaway be initiated by the Collector upon receipt of this order. Subsequently, all procedures may be undertaken as provided under the Act, 2013. Let this exercise be carried out within twelve weeks from the date of receipt of this order.

19. In view of the above, the petition is disposed of. A copy of this order be served upon the concerned Collector/LAC through the learned counsel for the respondents.

TUSHAR RAO GEDELA, J

VIBHU BAKHRU, J

JANUARY 31, 2025/yrj/rl