

(2020) 01 DEL CK 0543

In the Delhi High Court

Case No : Civil Writ Petition No. 992 Of 2020, Civil Miscellaneous No. 3189 Of 2020

B.S. Tolani

APPELLANT

Vs

Delhi Development Authority & Anr

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 5A, 6, 9, 10, 48

Citation : (2020) 01 DEL CK 0543

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Anand Yadav, Pradyumn Rao, Shobhana Takiar, Jyoti Tyagi, Yeeshu Jain

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J

1. The present petition, which is filed under Article 226 of the Constitution, seeks issuance of the following directions qua the respondents:

"(a) Directing the Respondents not to convert the land of Petitioner as a green area contrary to the land use of Master Plan of Delhi 2021 and also without approval of the layout plan by competent authority i.e. MCD(SDMC)."

2. This petition came up for hearing for the first time on 27.01.2020 when counsel for respondent no.1 i.e. the Delhi Development Authority (hereafter referred to as "DDA") and counsel for respondent nos.2 and 4 were present.

3. On that date, Ms. Shobhana Takiar, Advocate, appeared on behalf of the DDA, while Ms. Jyoti Tyagi appeared on behalf of respondent nos.2 and 4.

3.1 On that date, Ms. Takiar had taken a preliminary objection that the instant writ petition was not maintainable as the petitioner had no locus to seek the

relief that he had sought in the instant writ petition.

4. Ms. Takiar's contention was that the subject land had already been acquired and taken possession of and this writ petition was a charade to get around the judgment of the Division Bench of this court rendered in the petitioner's own case.

5. Thus, on 27.1.2020, after hearing Mr. Anand Yadav, Advocate, who appears on behalf of the petitioner and Ms. Takiar, I had indicated to Mr. Yadav as to whether he would like to press the petition any further in view of the judgment dated 21.12.2018, passed by the Division Bench of this court, in W.P.(C)No.3049/2014, titled B.S. Tolani v. GNCTD & Ors.

6. Apropos to the said observation, Mr. Yadav has returned with instructions today. Mr. Yadav says that he would want the Court to dispose of the matter on merits.

7. Therefore, before I proceed further, the following broad facts are required to be noticed.

8. The record shows that, concededly, the petitioner's land, amongst others, was a subject matter of award bearing No.60/1983, dated 17.01.1983. The petitioner, by way of a writ petition [(i.e. W.P.(C)No.753/1983)], challenged the said award. The petitioner was successful in having the aforementioned award quashed vide judgment dated 23.09.1986.

9. It is the petitioner's claim that since he was in possession of the subject land which admeasures 34 bighas and 8 biswas, he was required to take no further steps in the matter. The petitioner also avers that, although, the land was in his possession in the revenue record, the land continued to be shown as "government land".

10. The record further shows that the petitioner's land along with the land abutting his land came, once again, within the sway of acquisition proceedings with the issuance of a Section 4 notification issued under the Land Acquisition Act, 1894 (in short "1894 Act"). This notification was, evidently, issued on 21.07.2011. Section 4 notification was followed by a notification under Section 6 of the 1894 Act. Section 6 notification was issued on 19.07.2012.

11. The petitioner attempted to thwart the respondents' move to, inter alia, acquire the subject land by filing yet another writ petition in this court. The said writ petition was numbered as W.P.(C)No.3049/2014.

11.1 During the pendency of this writ petition, the Parliament enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "2013 Act"). This Act was brought into force on 01.01.2014.

12. Via W.P.(C)No.3049/2014, the petitioner had assailed the award dated 27.12.2013 concerning the subject land as well as Sections 4 and 6 notifications

and notices issued under Sections 9 and 10 of the 1894 Act, on the ground that the inquiry under Section 5A of the 1894 Act was vitiated as he had not been heard in support of his objections.

13. In other words, the contention was that the principles of natural justice had been violated. The other principal ground raised by the petitioner was that the Land Acquisition Collector (LAC) had not served on him a notice before taking possession of the subject land.

14. These two issues have been culled out by the Division Bench in paragraph 74 of its judgment. The Division Bench decided both issues against the petitioner.

15. Insofar as the first issue was concerned, the Division Bench ruled that since the LAC had considered the written arguments/objections of the petitioner, the principles of natural justice are complied with. Finding to this effect has been returned in paragraphs 84 and 85 of the judgment rendered by the Division Bench.

16. Likewise, the Division Bench repelled a contention advanced by the petitioner vis-à-vis the second issue as well, which was, that the official respondents only had a "paper possession" in the form of the document of possession titled, "kabza karwahi", dated 30.12.2013 and not physical possession.

17. The Division Bench returned a finding of fact that the petitioner was not in possession of the subject land. Findings to this effect are contained in paragraphs 86 to 88 of the judgment passed by the Division Bench.

17.1 For the sake of convenience, the same are set forth hereafter :

"86. In so far as the second issue, whether the possession of the land in question has been taken, is concerned, Mr. Rawal had relied upon the joint survey report dated October 27, 2010 to contend that the site at some places was cultivated and vegetables were grown and there is a well and two small rooms, which were constructed of T-Iron and as such it was necessary for the respondent nos. 1 and 3 / LAC to give a notice to the petitioner under Sections 9 and 10 of the Act of 1894 before taking possession.

87. In substance it is his plea that the; petitioner continued to be in possession of the land and the Kabza Karwahi dated December 30, 2013 on which respondent nos. 1 and 3 sought to rely upon Is only a paper possession. We are unable to agree with the said submission of Mr. Rawal for the reason that the petitioner's own case, in Para 2 of his letter dated November 21, 2011, is that the said land is within the DDA Residential Vasant Kunj Scheme in Sector-A, Pocket-C, Andheria Mor and two residential buildings of Vasant Kunj, DDA are constructed on the Tolani's land; in other words, two buildings were constructed by DDA. That apart even in Para 6 of the said letter, it is clearly stated by the petitioner that DDA -through its Officer Director (Lands) unlawfully obstructed the use of the land by the owner. The relevant part is reproduced as under:

"The Officer of the DDA. Director (Lands) Vikas Sadan, unlawfully obstructed use by owner of this said land by instructing Patwari / Tehsildar Mehrauli, to transfer Tolani land to DDA, and refused to write to Patwari / Tehsildar, to correct the land records, by transferring land to Mr. Tolani, the rightful, owner, as DDA could not purchase / acquire Tolani Land, as per Delhi High Court Judgment / Stay Order of 1983. Since 25 long years, DDA and Mehrauli Tehsildar, refused to correct land records, causing serious loss to Mr. Tolani."

88. So, it necessarily follows neither the buildings on the land were constructed by the petitioner nor the petitioner was in the use of the land. So to say that the petitioner was in possession of the land, is an incorrect stand on behalf of the petitioner. The Kabza Karwahi report clearly states that the land has been demarcated. It also states wherever the land is falling in an unauthorized colony and is built up at the site, possession of the same has not been taken. In the case in hand, the possession has been taken the report also suggests there was no hindrance faced at site. That apart, the possession of the land was handed over to the DDA, the beneficiary and is in their possession. So, the petitioner accepts the position that the land was for the purpose of Vasant Kunj Residential Scheme."

(emphasis is mine)

18. Concededly, the petitioner carried the matter in appeal to the Supreme Court by way of SLP(C)No.4386/2019, which was dismissed on 15.02.2019. Therefore, to my mind, the petitioner is attempting to collaterally assail the acquisition proceedings, qua which, his attempt has failed right up to the Supreme Court. The reliefs sought for by the petitioner, clearly, are a desperate attempt to retrieve what, in my opinion, today, is a lost cause.

19. Therefore, the petitioner's assertion that he continues to be in possession and that the respondents are changing land use from residential to a green-area has no substance, for the simple reason that it has already been found that the petitioner is not in possession of the subject land.

20. Thus, the instant writ petition, in my view, cannot be entertained.

21. It is, accordingly, dismissed.

22. The dismissal of the writ petition, however, will not come in the way of the decision on the petitioner's application which he has filed in January 2020 under Section 48 of the 1894 Act. The decision on this application, I am sure, would be taken by the concerned authority as per law.