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(2011) 07 DEL CK 0384

In the Delhi High Court

Case No : Writ Petition (C) 5294 of 2008

KSB Educational and Health Care Society — APPELLANT

Vs

MCD and Others — RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Citation : (2011) 6 AD 602 : (2011) 181 DLT 341 : (2011) 125 DRJ 82

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Pankaj Chopra, Susheel Bhashiya and Pranav Sapra, for the Appellant; Maninder Acharya, for Respondents No. 1 to 3/MCD, Amit Mehra, for Ajay Verma, for Respondent No. 5/DDA and Sanjay Poddar, for R6/LAC, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—The present petition is filed by the Petitioner/Society praying inter alia for directions to the Respondent/MCD to approve the layout plans of a Dispensary-cum-Health Clinic-cum-Hospital on a piece of land measuring 1 Bigha 15 Biswas situated in Khasra No. 1171/480/21/3 min. in the revenue estate of village Sadhora Khurd, Kali Dass Marg, Sarai Rohilla, Delhi, owned by the Petitioner/Society. The Petitioner/Society has also sought compensation of Rs. 10 lacs from the Respondent/MCD for the harassment caused to it and for not sanctioning the layout plans submitted by it.

2. At the outset, the counsel for the Petitioner/Society submits that he does not wish to press prayer (ii) of the writ petition and would like to confine the scope of the petition to the relief mentioned in prayer (i) alone.

3. Briefly stated, the facts of the case are that in October 1995, the Petitioner/ Society submitted layout plans to the MCD for approval, for the construction of a charitable Dispensary-cum-Health Clinic-cum-Hospital at the subject land, which was owned by one Smt. S.D. Gupta, a member of the Petitioner/Society, who

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had offered her land to the Petitioner/Society by executing a Gift Deed. Correspondence was initiated between the Petitioner/Society and the Respondent/ MCD on the aforesaid layout plans. Vide letter dated 29.11.1995, the Respondent/MCD raised certain queries and demanded some documents. The queries were replied to by the Petitioner/Society. Correspondence continued between the parties right upto March 2004, when vide letter dated 11.03.2004 (Annexure P-20), Respondent/MCD informed the Petitioner/Society that its proposal for approval of layout plans could not be accepted as the ownership of the land in question was not in the name of the Petitioner/Society. To overcome the aforesaid difficulty, the Petitioner/Society approached Smt. S.D. Gupta, who subsequently executed a Sale Deed dated 27.05.2005, transferring the land in question to the Petitioner/Society. Thereafter, the revenue authorities mutated the land in favour of the Petitioner/Society on 23.06.2005.

4. On 07.04.2006, the Petitioner/Society once again wrote to the Respondent/ MCD requesting it to re-open its case and approve the layout plans in view of the fact that a Sale Deed for the land in question had now been executed in its favour. Upon receiving such a request, the MCD wrote to the Govt. of NCT of Delhi, seeking verification of the ownership documents submitted by the Petitioner/Society. The MCD also sought a clarification from DDA as to whether the land in question fell within the acquired portion or the un-acquired portion of the land, and whether it was permissible for a Dispensary Health Centre to be built on the land earmarked for a hospital. Learned Counsel for the Petitioner/ Society contends that inspite of repeated notices sent by the Petitioner/Society to MCD, regarding the approval of the layout plans submitted by it, No. response was received from MCD even two years after the renewed request was made. As a result, the Petitioner/Society had to approach this Court by filing the present petition, seeking directions to the Respondent/MCD for approval of the layout plans submitted by it.

5. After notice was issued to the MCD, a short affidavit was filed on its behalf, wherein it was stated in paras 8 and 9 as below:

8. That it is important to note here that Khasra No. 1171/480/21 comprises of 13 Bighas and 17 Biswas of land. Vide Award No. 1556, 10 Bighas and 10 Biswas of land in Khasra No. 1171/480/21 was acquired. It was further recorded in the said Award that 1 Bighas and 15 Biswas land of this Khasra already stood acquired vide a prior award. The said award further recorded that the remaining 1 Bigha and 12 Biswas will be acquired at the time when other area round about is acquired. Copy of the said award No. 1556 dated 03.04.1963 is annexed herewith and marked as Annexure A-2. That the said remaining land of 1 Bigha and 12 Biswas was later on acquired vide award No. 1984. Thus with the acquisition of 1 Bigha and 12 Biswas, remaining land, the Khasra in question stood fully acquired.

9. That the land and Estate Department of the Respondent after detailed verification of records has informed the Town Planning Department of

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Respondent that entire land of Khasra No. 1171/480/21 measuring 13 Bighas 17 Biswas stands acquired. The information thus recorded which is duly signed by Patwari, Naib Tehsildar and other competent officials of Respondent is annexed herewith and marked as Annexure A-3.

Alongwith the aforesaid affidavit, a copy of Award No. 1556 dated 03.04.1963 in respect of village Sadhora Khurd was enclosed by the MCD. On the second page of the Award, it is mentioned as below:

...The whole of area of khasra No. 1171/480/21 measuring 13 bighas 17 biswas was notified under acquisition. From the inspection of the site, it is found that 1 bighas 15 biswas of this khasra number has already been acquired and 1 bigha and 12 biswas are situated on the Northern side of the above-mentioned road. Award regarding this 1 Bighas 12 Biswas will be made at the time when other area round about is acquired.

6. Vide order dated 07.04.2010, at the oral request of the counsel for the Petitioner/Society, the Land Acquisition Collector was permitted to be impleaded as Respondent No. 6 in the present proceedings so as to direct him to produce the relevant records pertaining to the land, subject matter of the present petition and to clarify the position with regard to its acquisition.

7. On 10.05.2010, an affidavit was filed by the Land Acquisition Collector (North), wherein it was stated that as far as the land measuring 1 Bigha 15 Biswas, being claimed by the Petitioner/Society, was concerned, in the Land Record Register, a reference of the said land''s acquisition could be found only in the details of Award No. 1556 where it was stated that the aforementioned land had been acquired by a previous award. It was further submitted that as per the revenue records, in the Khatoni of the year 1982-83, the ownership of the land under dispute was recorded as having been transferred in the name of the Petitioner/Society, vide mutation order dated 23.06.2005. Enclosed with the aforesaid affidavit was a copy of Award No. 1984 dated 30.06.1967.

8. Counsel for Respondent No. 6/LAC draws the attention of this Court to the second page of the aforesaid Award to state that land mentioned against Items No. 29 and 30, i.e., Khasra No. 1171/480/21/1 and Khasra No. 1171/480/21/2 measuring 0.16 Bigha each was part of Bagh Nehri and was acquired under the aforesaid Award, which pertains to the acquisition of land measuring a total of 95 Bighas 13 Biswas. He further states that the aforesaid 1.12 Bigha was acquired under Award No. 1984, while 10 Bigha 10 Biswas was acquired under Award No. 1556. As a result, both the Awards collectively covered the land measuring 12 Bighas 2 Biswas, though u/s 4 Notification, the land proposed to be acquired was 13 Bighas 17 Biswas. He submits that till date, his clients have not been able to lay its hands on any Award pertaining to land measuring 1 Bigha 15 Biswas, on which the Petitioner/Society lays a claim as the owner.

9. In view of the fact that till date the Respondents have not been able to place on record any document to establish that the parcel of land measuring 1 Bigha

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15 Biswas, to which the Petitioner/Society claims ownership, has been legally acquired, there is No. good reason to deny the Petitioner/Society its right for grant of sanction of layout plans pending at the end of the Respondent/MCD for so long. Accordingly, the present petition is disposed of with directions to the Respondent/MCD to consider the layout plans submitted by the Petitioner/ Society, in respect of the subject land in accordance with law, without raising any further objection that the land stands acquired, in the absence of any Award placed on record to that effect. The said process shall be completed by the Respondent/MCD within four weeks from today under written intimation to the Petitioner/Society. Before sanction is accorded by the Respondent/MCD, the Petitioner/Society shall furnish an undertaking/indemnity to the Respondent/MCD that in the event of an Award pertaining to the acquisition of aforesaid land of 1 bhiga 15 biswas in Khasra No. 1171/480/21/3 min. in the revenue estate of village Sadhora Khurd, Kali Dass Marg, Sarai Rohilla, Delhi, being produced, the Petitioner/Society shall not claim any lien on the land or any special equities, on the strength of the construction carried out by it in terms of the sanction plans, that may be granted in its favour by Respondent/MCD.

10. The petition is disposed of while leaving parties to bear their own costs.

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