

(2022) 10 DEL CK 0249

In the Delhi High Court

Case No : Civil Writ Petition No. 4073 Of 2018, Civil Miscellaneous Application
No. 33026, 37654 Of 2019

Mahendra Rana

APPELLANT

Vs

Delhi Development Authority & Anr

RESPONDENT

Date of Decision : 31-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 215, 226
Land Acquisition Act, 1894 — Section 3(b), 4, 5A, 17
Indian Easements Act, 1882 — Section 15

Citation : (2022) 10 DEL CK 0249

Hon'ble Judges : Chandra Dhari Singh, J

Bench : Single Bench

Advocate : Sumit Bansal, Udaibir Singh Kochar, Aditya Bakshi, Ashray Bhatia,
Utsav Garg, Sanjay Poddar, Govind Kumar, Nitin Mishra, Sanjay Dewan, Shivani
Pruthi, Simran Arora

Final Decision : Dismissed

Judgement

Chandra Dhari Singh, J

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

"(a) issue a writ or direction in the in the nature of Writ of Declaration, declaring the action of the Respondent Nos.1 and 2 as illegal, arbitrary and not in consonance with the order dated 30.9.2008 passed by this Hon'ble Court in WP(C) No.5756/2001;

(b) Issue a writ or direction in the nature of writ of mandamus thereby directing the Respondent No.2 to act upon the request made by the Respondent No.1 for acquisition of land of the Petitioner keeping in view the directions passed by the Hon'ble High Court in its order dated 30.9.2008 in WP(C) No.5756/2001;

(c) pass any other or further order or direction which this Hon'ble Court may

deem fit and proper in the facts and circumstances of the case."

2. The Petitioner alleges that his legal right to enjoy his property comprised in Khasra No. 35/16-1, Village Shahbad Daulatpur has been deprived by the Respondents because the land forming part of Khasra Nos. 35/15 and 34/11 have been acquired vide notification dated 27th October 1999 issued under Section 4 and Section 17 of the Land Acquisition Act, 1894, leaving the khasra number in question being 35/16-1, which has now become landlocked and the Petitioner cannot approach the said land.

3. Aggrieved by the land acquisition, the Petitioner filed a writ petition bearing number W.P. (C) 5756 of 2001, inter-alia, challenging the acquisition proceedings on the ground of discrimination as the land of the persons similarly situated as to that of the Petitioner had been denotified under the policy of denotification of Respondent No.2. The Division Bench of this Court vide order dated 30th September 2008 disposed of the said writ petition, inter alia, with the following observations:

"Copy of the plan showing location of land in Khasra No.35/15, 34/11 and 35/16-1 has been filed on the basis of which he submits that after acquiring land belonging to the petitioner in Khasra No.35/15 and taking possession thereof, there is no access to his land covered by Khasra No. 35/16-1. From the site plan as perused, this submission of the Ld. Senior Counsel appears to be correct.

In these circumstances, two suggestions are mooted by Mr Ravinder Sethi, Ld. Sr. Counsel for the Petitioner, in the alternative.

First suggestion is that the respondents may consider acquiring land comprised in Khasra No.35/16-1 as well. He points out that suggestion in this respect was given as back as on 17.05.2005 when counsel for the respondents had taken time to seek instruction as to whether there was a possibility of acquiring this piece of land. His alternate suggestion is that he should be allowed a passage to access his land in Khasra No. 35/16-1.

Since the challenge to the acquisition is given up, we are of the opinion that the petitioner may make a representation to the DDA giving both the proposals mentioned above in as much we find that the problem faced by the petitioner is genuine and therefore, it can be resolved by accepting either of the aforesaid suggestions. If the respondents do not want to acquire the other land, the petitioner, prima facie, has right to access to his other land which cannot be blocked in the manner done by acquiring other piece of land.

Such a representation shall be moved within a period of two weeks from today and possession thereof shall be taken within two months thereafter by the DDA.

The petition is disposed of in the above terms."

4. After passing of the aforesaid judgment, on 4th December 2008, the Petitioner made representation to the Respondent No.1 requiring the Authority to decide

upon the representation and to pass orders in terms of the judgment dated 30th September 2008. Failing to receive a response to his representation, the Petitioner made subsequent representations dated March, 2011 and 7th May 2015. Again, failing to receive a response to his multiple representations, the Petitioner thereafter filed a contempt petition bearing number Contempt Case No. 870 of 2015. The Coordinate Bench of this Court vide order dated 18th November 2015 dismissed the Contempt petition with the following observations:

"Since the present contempt petition has not been filed within limitation, this Court is of the view that the present contempt petition is clearly barred by limitation.

At this stage, learned counsel for petitioner submits that this Court should exercise its power under Article 215 of the Constitution of India.

However, this Court is of the view that this is not a case where inherent power of the Court under Article 215 of Constitution of India should be exercised, In any event, the breach complained clearly falls within the ambit of the statutory provisions. Since the statutory provision is clearly barred by limitation, this Court is not inclined to exercise its inherent power and that too for a private cause.

Consequently, the present contempt petition is dismissed. However, the petitioner is given liberty to file appropriate proceedings in accordance with law."

5. Thereafter, the Petitioner filed a writ petition bearing number W.P. (C) 7609/2016 before the Coordinate Bench of this Court. The writ petition was disposed with a direction to the Delhi Development Authority to dispose of the Petitioner's representation. The relevant portion of the order dated 29th August 2016 is reproduced below:

"Keeping in view the limited controversy raised in the present proceedings, present petition is disposed of with a direction to Commissioner (Land Management), DDA to dispose of petitioner's representations dated 4th December 2008, March 2011 and 7th May, 2015 at pages 23, 26 and 31 of the paper-book within a period of eight weeks, if not already disposed of.

With the aforesaid directions, present petition stands disposed of. It is clarified that this Court has not expressed any opinion on the merits of the controversy. All rights and contentions of the parties are left open."

6. Thereafter, vide communication dated 21st October 2016 the Respondent No.1 has informed the Petitioner that the Respondent No.1 has decided to acquire the land of the Petitioner and for the said purpose has issued various communications to the office of the Respondent No.2. The relevant portion of the communication is reproduced below:

"Whereas DDA considered the representation dt. 4.12.08 and had taken a conscious decision in consultation with Planning Deptt. to acquire the land of the petitioner failing in khasra no. 35/16-1 measuring 3 bigha 12 biswa with the

approval of the competent authority. Accordingly requisition was sent vide F.12(623)2001/HC/Legal/272, dated 20.10.09 to L&B Deptt. GNCTD for acquiring aforesaid land under LA Act 1894 for development of Rohini Residential Scheme under PDD. Subsequently, several reminders were also sent on 20.10.10, 11.10.11, 21.11.11, 20.12.13 and lastly 21.4.14, but no response have been received from L&B Deptt. GNCTD, despite the reminders.

Whereas Hon'ble High Court of Delhi in its recent direction dt. 29.8.16 in WP(C) no. 7609/2016 directed Commissioner (LM), DDA to dispose of petitioner's representations dt. 4.12.08 and its subsequent reminders if not already disposed of.

Whereas DDA had already completed action on the representation of the petitioner dated 4.12.2008 by sending requisition to Land Acquisition Authority i.e. L&B Deptt., GNCTD for acquisition of the land vide its letter dt. 20.10.09 and the representation of the petitioner Sh. Mahendra Rana stood disposed of way back in 2009. The petitioner is informed accordingly."

7. Still aggrieved with the non-resolution of his grievance, the Petitioner has approached this Court by way of the instant writ petition.

8. Learned counsel appearing on behalf of the Petitioner has submitted that the Division Bench of this Court vide order dated 30th September 2008 had directed that the Delhi Development Authority to decide as to whether the passage is to be granted or that the land needs to be acquired. It is submitted that once the Respondent No. 1 has taken decision to acquire the land, the Respondent No.2 ought to have proceeded with the acquisition as the said proceedings of the acquisition were not only with the consent of Petitioner but also was in consonance with the order dated 30th September 2008 passed by this Court.

9. It is further submitted that the remaining land of the Petitioner has become landlocked and the Petitioner is not in a position to use and cultivate the same and thus, have been requesting the Delhi Development Authority either to provide a passage or acquire the same.

10. Per Contra, learned senior counsel appearing on behalf of Respondent No. 1 has submitted that for getting a right of way in the present facts and circumstances, the following conditions have to be fulfilled by the Petitioner:

(1) The land is 'landlocked' with DDA land. But in case in hand, as per the map the Petitioner's land in Khasra No.35/16/1 is not 'landlocked' as on one side there is DDA's acquired land and on the other 3 sides, there are private lands attached to Khasra No. 35/16/1, further there is kacharasta in Khasra No. 34/1, is having the direct access to existing passage.

(2) Further as per Section 15 of Indian Easements Act, 1882, extracted below:

"15. Acquisition by prescription. -Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement,

without interruption, and for twenty years, and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years, and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement and as of right, without interruption, and for twenty years, the right to such access and use of light or air, support or other easement shall be absolute. Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested...."

11. Therefore, the 20 years, uninterrupted use of the right to way, is required to be proved by the Petitioner as an absolute condition.

(3) Further as per Section 3(b) & 5A of the Land Acquisition Act, 1894 extracted below:

"[3(b)] the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

5A. Hearing of objections. - (1) Any person interested in any land which has been notified under section 4, sub section (1), as being needed or likely to be needed for a public purpose or for a Company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be."

12. Hence, the objection for Right to way was acquired to be raised before the appropriate authority by the Petitioner, which is not found on record.

13. Learned senior counsel appearing on behalf of the Respondent No.1 also submitted that Easement rights are to be established and can be done only by leading evidence and by proving a case under the Indian Easement Act, 1882. It is submitted that the Petitioner cannot plead grant of easement rights without having to prove that the petitioner is entitled to such easement rights.

14. Heard learned counsel appearing on behalf of the parties and perused the record. I have given my thoughtful considerations to the submissions made on behalf of the parties.

15. Vide order dated 30th September 2008, the Division Bench of this Court did not issue a mandamus to the Respondents but only liberty was given to the Petitioner to represent his grievance before the concerned authority so that an early disposal of the dispute at hand can be reached outside the Court. The Petitioner filed a representation beyond the time period permitted by the Division Bench of this Court vide order dated 30th September 2008, which was decided by Respondent No.1 and a request was made to the Respondent No. 2 on 20th October 2009 to acquire the remaining land of the Petitioner falling under Khasra

No. 35/16-1. Even after this many reminders were sent by Respondent No.1 to Respondent No. 2 but no response was received from the Respondent No.2.

16. The contempt petition filed by the Petitioner against Respondent No.1 as his representations were not decided by the Respondent No.1 herein was also dismissed by a Contempt Court vide order dated 18th November 2015 as being infected with vices of delay and therefore, being barred by limitation.

17. Vide letter dated 14th October 2016, the Petitioner was communicated the outcome of his representation by the Respondent No.1 which was disposed of in the year 2009 itself. This court fails to understand as to why 7 years were taken by the Respondent No.1 to inform the Petitioner about the outcome of his representation. Such lackadaisical approach on part of the concerned Authorities negatively contributes to the pendency of matters in the Constitutional Courts and must be discouraged.

18. In the present writ petition, the Petitioner has vehemently submitted that vide order dated 30th September 2008, the Division Bench of this Court had directed the Respondent No.1 to decide as to whether the passage is to be granted or the land needs to be acquired. Therefore, the Petitioner has virtually asked for a direction to the Respondents to execute the order passed by the Division Bench of this Court.

19. After perusing the order dated 30th September 2008 passed by the Division Bench of this Court, it becomes clear that the direction to the Respondent No.1 was to decide the representation of the Petitioner which has been duly complied by the Respondent No.1 as the representation of the Petitioner has been rejected. Therefore, the prayers made by the Petitioner in this writ petition are misconceived and cannot be granted. Moreover, the Petitioner has failed to challenge the rejection of his representations made to the Respondent No.1 qua grant of passage or acquisition of his remaining land in the instant writ petition.

20. Even otherwise, in my opinion the relief of passage cannot be granted in the writ jurisdiction for the simple reason that the grant of easementary rights and determination of the same requires adjudication of disputed facts which may be better suited to be determined by way of a civil suit, if the Petitioner so desires. The Respondent No.1 has categorically denied that the land of the Petitioner has become landlocked and cannot be accessed by the Petitioner. The relevant portion of the written submission is reproduced below:

"b. A perusal of the site plan which has been filed along with the present written arguments would show that the petitioner cannot be granted any passage and that too by DDA as next to the land in question is private land and on which land DDA has neither any control nor any ownership. It is also a matter of fact which cannot at all be disputed by the petitioner that as per the site plan, the petitioner land in Khasra No. 351/1611 is not land locked, as on one side there is DDA acquired land and on the other three sides there are private lands attached to Khasra No. 351116/1. Further there is Kaccha Rasta in Khasra No.24, 171/2. It is

also trite to submit that the Petitioner has another land which is comprised in khasra No. 341/11 and from which piece of land, the Petitioner is having direct excess to the land in.”

21. In view of the above facts and circumstances, the instant writ petition being devoid of any merit is dismissed along with pending applications, if any.

22. The order be uploaded on the website forthwith.