
(2019) 05 DEL CK 0515

In the Delhi High Court

Case No : Civil Miscellaneous Application No. 2593 Of 2017 In Civil Writ Petition
No. 5838 Of 2013

Nalin Khanna & Ors

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 09-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And
Resettlement Act, 2013 — Section 24(2)

Citation : (2019) 05 DEL CK 0515

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : R.K.Saini, Arjun Pant

Final Decision : Dismissed

Judgement

C. Hari Shankar, J

1. This application, though styled as an application for "modification/clarification" of the order, dated 4th October, 2016, passed by a coordinate Bench of this Court, disposing of W.P.(C) 5838/2013, the nature of the relief sought in the application indicates that the petitioners essentially seek a complete rehearing of the writ petition and effectively, a review of the decision of the said Coordinate Bench.

2. The matter was listed before the same Bench (of Hon'ble Manmohan, J.) on which date, apparently, learned counsel for the petitioner requested that the matter should be listed before the Roster Bench, as the application only sought modification/clarification of the order dated 4th October, 2016.

3. The order dated 5th April, 2019 may, for ready reference, be reproduced thus:

"C.M.No.2593/2017

Learned counsel for the petitioners states that since the present application is for modification/clarification of the order dated 04th October, 2016, the same can be heard by the Roster Bench.

Accordingly, list the present application before the Roster Bench on 26th April, 2019.

Learned counsel for the petitioners is directed to intimate the next date of hearing to the Deputy CLA, DDA in High Court."

4. This is how, the matter has come to be listed before me.

5. In that view of the matter, I have heard Mr. R.K.Saini, who has argued this application in detail, as well as Mr. Arjun Pant, learned counsel for the DDA.

6. The prayer clause in the writ petition, may, at the outset, be reproduced thus:

"In the premises aforesaid, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to issue:

(a) A writ of certiorari calling for the records of the case for perusal;

(b) A writ of certiorari quashing the action of the DDA in not providing the 24 mtr. wide road in front of the plots allotted to the Petitioners, as shown in the approved layout plan of the area, after demand and receipt of the extra premium for the same, being illegal, arbitrary, malafide, unjust, discriminatory and in violation of the Rules and Regulations and the terms and conditions of auction and specifications of the plots and area and the principles of equity, justice and good conscience;

(c) A writ of mandamus commanding the DDA to forthwith provide the promised 24 mtr. wide road in Jasola, Pocket 2, complete the same and make it available to the Petitioners at the earliest and within a time bound frame, maximum within 3 months and if necessary for the purpose, forthwith remove the unauthorized construction/ encroachment coming in the way of the same;

(d) A writ of mandamus commanding the respondent DDA to suitably compensate the petitioners for the loss, damages and inconvenience and harassment suffered by them for all these years on account of non-providing of the promised road in front of their plots, on account of which they have not been able to use the plots after payment and getting possession, either by paying interest @ 12% per annum on the premium of the plot paid by them from the date of payment till the providing of the road or a suitable and adequate lump sum as damages, as may be determined by this Hon'ble Court.

(e) Any other writ, order or direction, which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice."

7. During the course of proceedings, before the learned Single Judge in the writ petition, it transpired that part of the land which would be required for widening of the road, as prayed by the petitioners, had been acquired by the DDA, for the

said purpose, but that the acquisition proceedings had lapsed, with efflux of time, by application of the Land Acquisition Act, 2013.

8. Without going into the nitty-gritty of the proceedings in that regard, I may straightway refer to the map at page 168 of the paper book, which is Annexure R-7 to the writ petition filed by the DDA to the writ petition and shall be enclosed as an annexure to this order.

9. In the said map, there are two areas, which are shaded as light blue and dark blue, and the recitation to the right side of the map indicates that the area in light blue, i.e. Khasra no. 268-min (constituting 13 biswas) was still in the possession of the earlier owners of the said area, from whom the Land Acquisition Collector had acquired the land, as the acquisition proceedings, in respect thereof, had lapsed.

10. However, regarding the area shaded dark blue in the map, the noting, by the DDA, indicates that the possession of the said area had been handed over, to the DDA, by the Land Acquisition Collector, as the judgment of this Court, which held that the acquisition, in respect of the said area, had lapsed, was subsequently reviewed and reversed.

11. Resultantly, it is a conceded position, at the bar, that though the DDA has acquired possession of the area shaded dark blue in the aforementioned map, it is still not in possession of the area shaded light blue on the map.

12. The submission of Mr. Saini, essentially, is that inasmuch as the area shaded dark blue in the aforementioned map is now in the possession of the DDA, and there are unauthorised encroachment and constructions on the land, the DDA should remove the unauthorised encroachment and constructions and at least widen the road to cover the said area.

13. He draws my attention, in this context, to paras 4 and 5 of short affidavit filed by the DDA in response to the writ petition. However, for ready reference, paras 3 to 6 of the said short affidavit of the DDA, may be reproduced thus,

"3. That the land which is required for the extension of the said road to make it 24 meter wide falls in Khasra No. 268 min, 272 min and 275 min of Village Jasola. The land of Khasra No. 268 and 272 was acquired vide Award No.6-D/ Suppl./86-87 and 4/97-98 respectively. The physical possession of land of Khasra No. 272 min measuring (1-09) was handed over to the DDA on 06.08.2009 and the physical possession of the remaining portion of Khasra No. 272 min i.e. measuring (0-04) was handed over to the DDA only on 23.11.2012. The copy of the Kabza Karvahi (possession Taken Report) is annexed herein and marked as Annexure R-1 (Colly)

4. The land of Khasra No. 664/539/275 min measuring (4-00) was acquired vide Award No.3/2008-

9. However, the physical possession of land of Khasra No.664/539/275 min has

been recently handed over to the DDA on 31.12.2013. The copy of the Kabza Karyahi (Possession Taken Report) is annexed herein and marked as Annexure R-2. However, the said possession has been handed over on as is where is basis and there are various unauthorized constructions on the said land.

5. That immediately after taking over the possession, the DDA has initiated the process to remove the encroachments and unauthorized constructions in order to widen the road to 24 meters. However, due to the general elections, in terms of the directions/guidelines issued by the Election Commission of India, the said process has been suspended during the election period. The steps will be resumed after the elections and the DDA will make all its endeavour to remove the unauthorized encroachments as expeditiously as possible and thereafter carry out the widening of the road as far as possible.

6. That somehow, the LAC/LSB has not handed over the physical possession of the land falling under Khasra No.268 min measuring (0-13) which is required for the widening of the road. The DDA has written various letters to the said department requesting them to handover the vacant physical possession of the said land in order to enable the DDA to widen the road. The copy of the said letter is annexed herein and marked as Annexure R-3 (Colly). It is submitted that, the Petitioners have not impleaded LAC/LSB despite the fact that they were necessary parties."

14. It is clear, even from the above averments of the DDA, on which Mr. Saini places reliance, that the "light blue" area in Khasra No. 268-min (admeasuring 13 biswas), which is also required for widening of road, is still in the possession of the DDA. It is also admitted by Mr. Saini, that the lapsing of the acquisition, in respect of the said area, continues and that, therefore, it is not possible for the DDA, at this stage, to acquire the said land.

15. Mr. Saini, however, relies on the undertaking, in the above extracted passages, by the DDA to remove the encroachments in the "dark blue" area comprising Khasra no. 272, and to undertake widening of the road thereafter, and submits that the DDA cannot resile from the said statement, which was placed on affidavit.

16. It was in these circumstances Mr. Saini submits, that the order dated 4th October, 2016, of the learned Single Judge, disposing of the writ petition, needs a relook.

17. The precise submission of Mr. Saini, during arguments today, is that the DDA ought to be directed to remove the unauthorised constructions/ encroachments in the area shaded dark blue on the map referred to hereinabove, comprising Khasra no.272, and to widen the road, at least to that extent.

18. The DDA has filed a reply to the present application, paras 5 to 13 of which merit reproduction, in extenso, thus:

"5. It is submitted that during the course of the proceedings in the writ petition

before this Hon'ble Court, the answering Respondent DDA on 15.04.2014 had filed its affidavit, wherein it was submitted that:

(i) The land bearing Khasra no. 268 and 272 was acquired vide the award no. 6-D/Suppl. /86-87 and 4/97-98 respectively.

(ii) The physical possession of the land of Khasra no. 272 admeasuring (1-09) was handed over to the DDA on 06.08.2009 and the physical possession of the remaining Khasra no. 272 admeasuring (0-04) was handed over to the DDA only on 23.11.2012

(iii) The land bearing Khasra no. 664/539/275 admeasuring (4-00) was acquired vide the award no. 3/2008-09, however the possession of the land was transferred to the DDA on 31.12.2013 vide Kabja Karvahi (possession taken report).

(iv) As regards the Khasra no. 268 admeasuring (0-13) which was required to widen the road, the vacant possession of the land was not handed over to the DDA by LAC, despite writing several request letters to the department.

A true copy of the Affidavit dated 15.04.2014 filed by DDA in the subject writ petition is annexed hereto and marked as Annexure R-1.

A true copy of the site plan as was annexed in DDA's affidavit showing the status on the said date is annexed hereto and marked as Annexure R-2.

6. It is submitted that a writ petition was filed by Jagbir Singh and Anr. being WPC no. 11235 of 2015 seeking a Declaration from this Hon'ble Court that the acquisition of the land bearing Khasra no. 268 area admeasuring (7-15) in Village Jasola as acquired vide the award no. 6-D/Suppl. /86-87 had lapsed. The said writ petition came to be allowed by the Hon'ble Division bench of this Hon'ble Court on 09.08.2016 while holding the acquisition of the said land to have lapsed by virtue of Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter "Act of 2013").

7. That the above position was submitted on behalf of the Respondent LAC on the hearing dated 04.10.2016 in the subject writ petition and while dismissing the writ petition, this Hon'ble Court held as follows:

"Since it is an admitted position that the land on which the road had to be constructed is not available with the respondents, no relief can be granted to the petitioners.

Accordingly, the present writ petition and the applications are dismissed. However, the petitioners are given liberty to file appropriate proceedings seeking compensation for any loss suffered by them. It is clarified that this Court has not expressed any opinion on the merits of the claim for compensation. The rights and contentions of all the parties are left open."

8. That after the passing of the aforesaid order in the subject writ petition, the petitioner though not having taken any objection at the time of hearing, has filed an application now seeking direction of the DDA to construct 24 meters road on the parcel of the land which does not fall in Khasra no. 268.

9. The answering Respondent most humbly and respectfully submits before this Hon'ble Court that there has been no deliberate lapse on the part of the said Respondent as alleged by the Petitioner herein. It is further most humbly submitted that the petitioner has failed to bring to the notice of this Hon'ble Court certain facts, on account of which it is not practically possible to construct a 24 meters Road as sought for by the petitioners herein, at least as of present:

(i) It is submitted that the construction of a 24 meters Road as sought for by the petitioner would be possible only if the stretch of the land leaving Khasra no. 268 and to the extent of 24 meters width is available free of any claim by private individuals.

(ii) In the above regard, as is clear from the preceding paras the acquisition in respect of the Khasra no. 268 already stands lapsed by the order of this Hon'ble Court dated 09.08.2016.

(iii) Further, part of the Khasra no. 272 which also formed a part of proposed site plan was under litigation before this Hon'ble Court in WPC no. 7202 of 2015 titled as "Nirmal Singh vs. Union of India and Ors.". That, on 14.03.2017, this Hon'ble Court vide its order has allowed the said writ petition by declaring the acquisition in respect of the land in Khasra no. 272 (1-14) to have lapsed by virtue of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

A true copy of the order dated 14.03.2017 passed by this Hon'ble Court in WPC no. 7202 of 2015 titled as "Nirmal Singh vs. Union of India and Ors." is annexed hereto and marked as Annexure R-3.

(iv) That, further, in WPC No. 6714 of 2014 titled "Pritam Singh vs. Union of India", the petitioner Pritam Singh and Anr. had sought declaration as regards the lapsing of the acquisition proceedings in respect of the land comprised in Khasra No.664/539/275, which was allowed vide the decision of this Hon'ble Court dated 25.11.2014.

A true copy of the order dated 25.11.2014 passed by this Hon'ble Court in WPC No. 6714 of. 2014 titled "Pritam Singh vs. Union of India" is annexed hereto and marked as Annexure R-4.

(v) Apart from the above, there is part of Khasra no. 232 on which the existing road is lying. That this Hon'ble Court vide its order dated 18.04.2017 in WPC no. 9325 of 2015 titled as "Ishwar Singh and Ors. Vs. Union of India" has declared that the acquisition proceedings to the extent of 5 Bighas 2 Biswas of the Khasra no. 701/486/232 has been lapsed, a part of which (i.e. of Khasra no. 232) is present on the existing road.

A true copy of the order dated 18.04.2017 passed by this Honhble Court in WPC no. 9325 of 2015 titled as "Ishwar Singh and Ors. Vs. Union of India" is annexed hereto and marked as Annexure R-5.

(vi) It is further submitted that quite apart from the aforesaid litigations, wherein the acquisition proceedings have been declared to have been lapsed by various orders of this Hon'ble Court and by virtue of the 2013 Act, there are structures abutting the land on which the widening of the existing road is being sought.

A rough location plan in respect of the lands whereupon providing 24 meters Road is sought by the petitioner is being annexed hereto and marked as Annexure R-6.

10. It is further submitted that in the subject area, there is at present an existing road having a width of 18 meters constructed by the DDA.

Photographs showing 18 meters Road constructed by DDA on the aforesaid parcels of land in Village Jasola are annexed hereto and marked as Annexure R-7.

11. The answering Respondent submits that in view of the aforesaid developments, which have not been brought to the notice of this Hon'ble Court, it is not practically possible to widen the road to the extent of 24 meters as sought by the petitioners. It is most humbly submitted that construction of road in a haphazard manner with varying widths at different parcels of the road would only tend to create further problems in movement of traffic.

12. The answering Respondent further submits that the Engineering Department of DDA is not averse to the contemplation of the widening of the Road, if it is practically possible and if the entire stretch of the land is made available without any interest claimed by private individuals. However, as on present date, on account of developments as averred in the aforementioned paras, it is not practically possible to widen the road in terms of the prayer made by the petitioners in their Application.

13. The answering respondent further most humbly submits that despite the aforesaid developments, the concerned departments of DDA are making attempts to see. If widening of the road in uniform manner to any extent is possible by ascertaining the status of the land at various Khasra numbers. In case, any possibility would exist after the process is completed, the Respondent is ready and willing to take further steps in this regard.

14. It is most respectfully submitted that in view of the above, the application as filed by the petitioner is devoid of any merits and liable to be dismissed.

15. That I submit that nothing material has been concealed from this Hon'ble Court."

19. Mr. Saini seeks to emphasise the fact that the tenor of the order dated 4th October, 2016 indicates that this Court had felt that no relief could be granted only because it was under the impression that the land which was required for

widening of the road was not available. This impression, Mr. Saini would submit, was, however, erroneous, as the "dark blue" area in Khasra No. 272 was, in fact, available and in the possession of the DDA. Mr. Saini, therefore, submits that, insofar as the land is available, i.e. to the extent of the land which is shaded dark blue on the map, the DDA should be directed to widen the road, and the order dated 4th October, 2016 modified/clarified to that accordingly.

20. The limited brief, of this Court, in the present application, is to see whether any case is made out for reopening of the proceedings, and issuing any directions for modification/clarification of the order dated 4th October, 2016, or for review thereof.

21. The passages, from the reply, filed by the DDA, to the present application, as extracted hereinabove, indicate that part of the land, which would be required for widening of the road in a uniform manner, is still acquired by other parties and that, in the case of certain parties, the acquisition proceedings were challenged and the challenge upheld by this Court on the ground that the acquisition had lapsed.

22. The DDA has categorically stated that, in view of these developments, widening of road to the extent of 24 meters, as sought in the writ petition, is not possible. It has also expressed its difficulty in widening of the road in a haphazard manner, resulting in the road being wide in some parts and narrow in others, submitting that this would greatly hinder the smooth movement of traffic.

23. Despite these facts, the DDA has also stated, in paras 12 and 13 of the reply filed in response to the present application, that it is not averse to the widening of the road, if it is practically possible. It is also stated that efforts are being made by it to ascertain the status of the land comprised in the various Khasras to ascertain if such an exercise could feasibly be undertaken.

24. In view thereof, however one looks at it, the prayer in the writ petition, which is for widening of the road, cannot be granted, for the aforementioned two reasons, i.e. (i) the road, if widened, would have to be widened in a uniform manner, so as to avoid different widths of the road at different places, and (ii) such uniform widening of the road is not possible as the acquisition, in respect of the part of the land required for the said purpose, has lapsed by efflux of time, and judicial orders, in favour of the land owners, stand passed, inter alia, by this Court.

25. Before parting with this order, I may observe that issues such as these, involving the aspect of widening of roads, etc., are essentially within the province of the DDA. This Court is not possessed of the requisite expertise to ascertain whether it is practically feasible to widen roads and carry out such infrastructural changes.

26. Various considerations arise where such changes are to be effectuated such as considerations regarding movement of traffic, persons occupying the areas in

question, as well as other geographical, topological and economic considerations, which may be involved. This Court, in my view, could legitimately exercise jurisdiction, under Article 226 of the Constitution, only where the authorities concerned are not found to be carrying out their duties with due diligence and as expected of them.

27. I have no reason to believe that the DDA is not making all efforts to widen the road, but that the exercise is taking time owing to various factors.

28. In view thereof, I do not see any justification for acceding to the prayer, of the petitioner, to reopen the case or to modify/clarify the order of 4th October, 2016.

29. The application is, accordingly, dismissed.