

(2023) 05 DEL CK 0408

In the Delhi High Court

Case No : Civil Writ Petition No. 2314 Of 2014

Ramanand

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 26-05-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 17(1)

Citation : (2023) 05 DEL CK 0408

Hon'ble Judges : Mini Pushkarna, J

Bench : Single Bench

Advocate : Ashutosh Dubey, Rajshri, Amit P. Shahi, Sanjay Kumar Pathak, Sunil Kumar Pathak, M.S. Akhtar, Ravi Violet Tigga, Nidhi Thakur, Peeyush Pathak, S. Janani

Final Decision : Disposed Of

Judgement

Mini Pushkarna, J

1. By way of the present writ petition, the petitioner has prayed that his land measuring 8 Biswa in Khasra No. 45/18 situated in the Revenue Estate of Holambi Khurd, Delhi, which has not been acquired by the respondent, be handed over back to the petitioner, as the same has wrongly been utilised by the respondent, Delhi State Industrial and Infrastructure Development Corporation Ltd. (DSIIDC).

2. It is the case of the petitioner, that the petitioner was recorded bhumidar/ owner and in possession of land against Khata khatauni No.86/67 Min against Khasra No. 46/19 (3-12) and against Khata khatauni No. 182/143 comprising Khasra Nos.45/14 (4-9), 15(4-16), 16(2-4), 17(1-15), 18(1-18) 46/11(4-16), 12(4-16), 20(3-2), measuring 31 bighas 8 biswas situated in the revenue estate of village Holambi Khurd, Delhi.

3. Subsequently, the land of the petitioner measuring 27 bigha 16 biswa was notified for acquisition under Section 4 and 17(1) of The Land Acquisition Act,

1894, vide notification dated 15.11.1996. Subsequently, Declaration under Section 6 of the Land Acquisition Act, 1894 was issued vide notification dated 21.11.1996. Subsequently, vide Award No. 4/98-99 announced on 20.11.1998, the aforesaid land of the petitioner was acquired.

4. Subsequently in terms of the aforesaid Award dated 20.11.1998 government took the possession of the acquired land on 18.08.1998. Thereafter, compensation was also received by the petitioner for acquisition of his land measuring 27 bigha 16 biswa on 02.12.1998.

5. It is the case of the petitioner that petitioner owned land measuring 1 bigha 18 biswa in khasra No. 45/18, in village Holambi Khurd. However, land measuring only 1 bigha 10 biswa was acquired from Khasra No.45/18. Attention of this Court has been drawn to Khatauni for the year 1986-87 which shows that petitioner owned 1 bigha 18 biswa in Khasra No.45/18.

6. Attention of this Court has also been drawn to payment certificate dated 20.02.2014 issued by the office of the Land Acquisition Collector, which shows that compensation was paid to the petitioner for land measuring 1 bigha 10 biswa in Khasra No.45/18.

7. The court has also perused the Award dated 19.11.1998, which shows that land measuring 1 bigha 10 biswa was acquired in Khasra No. 45/18. Thus, the fact remains undisputed that out of 1 bigha 18 biswa owned by the petitioner in Khasra No.45/18, land measuring only 1 bigha 10 biswa was acquired and that land to the extent of 8 biswa remained un-acquired.

8. It is the case on behalf of the petitioner that the aforesaid land measuring 8 biswa in Khasra No.45/18 is a vacant land, which continued to lie as vacant land. Subsequently, the petitioner noticed in September 2013 that the respondent DSIIDC had taken physical possession of the un-acquired 8 biswa land of the petitioner also out of Khasra No.45/18, by construction of a boundary wall. The petitioner made various visits to the Land Acquisition Collector as well as to the DSIIDC and Delhi Development Authority (DDA) against the action of taking possession of 8 biswa land of petitioner in Khasra No.45/18, which was neither notified for acquisition, nor any compensation was paid to the petitioner for the same. Subsequently, petitioner issued a legal notice dated 26.11.2013 and thereafter, the present writ petition was filed in the year 2014.

9. It is contended on behalf of the petitioner that the possession of the petitioner's land to the extent of 8 biswa in Khasra No.45/18 has wrongly been taken by the DSIIDC. Thus, he prays that demarcation of the land be carried out, so that after demarcation, either the said land measuring 8 biswa wrongly taken by the DSIIDC, is returned to the petitioner or the said land is acquired.

10. On the other hand, Mr. Sanjay Kumar Pathak, Ld. Standing Counsel for respondent Land & Building Department submits that the acquisition in the present case was undertaken by the department way back in the year 1998.

Thus, he submits that the present writ petition that was filed in the year 2014, is highly belated. He further submits that no relief can be granted against the Land & Building Department.

11. Ms. S. Janani, Ld. Counsel appearing for DSIIDC submits that land measuring 1 bigha 10 biswa was acquired and handed over to the DSIIDC out of Khasra No.45/18. She has relied upon the report dated 31.08.2017 as received from the Patwari of the area in question. She submits that only the acquired area is under the possession of the DSIIDC.

12. I have heard Ld. Counsels for the parties and have perused the record.

13. It is undisputed that the respondents have neither notified the area of 8 biswa out of Khasra No. 45/18 for acquisition, nor awarded any compensation for the same. Ld. Counsel for the petitioner has shown the Khatauni of the year 2000-01, which clearly shows the ownership of petitioner to the extent of 8 biswa of land in Khasra No.45/18. The name of the petitioner is recorded in the revenue record as owner of the land measuring 8 biswa in Khasra No.45/18.

14. There is categorical assertion by the petitioner that possession of the un-acquired area of 8 biswa in Khasra No.45/18 has wrongly been taken by the DSIIDC by constructing a boundary wall.

15. In similar circumstances, where there was assertion that excess land had been taken over by the authorities beyond what had been acquired, Division Bench of this Court vide order dated 20.12.2012 in W.P.(C) 8005/2012, held as follows:

".....

We thus consider it appropriate to dispose of the writ petition with the following directions:

i) The land and building department of the Govt. of NCT of Delhi should get a fresh demarcation carried out at the site and verify if any excess land has been taken possession of.

ii) The petitioner should be associated with the process of such demarcation.

iii) In case any excess land has been taken possession of, then appropriate proceedings should be initiated under the Land Acquisition Act, 1894 so that the petitioner gets compensation for the excess land, if any."

16. Thus, in the present case also it is deemed appropriate that in order to ascertain the factual position, demarcation of the land in question is necessary.

17. Considering the facts and circumstances of the present case, it is directed that the concerned revenue authorities of the area in question shall carry out demarcation of the area in question in order to demarcate the acquired portion in terms of Award No.4/98-99 dated 20.11.1998 and land measuring 8 biswa in Khasra No.45/18, which remains un-acquired. It is further directed that the

petitioner shall be associated in the process of demarcation.

18. In case after demarcation, it is found that any excess land has been taken possession of, then the respondent/DSIIDC is directed to take steps to return the said excess land to the petitioner herein. In case the land has already been utilised, in the alternative, the respondents are directed to initiate appropriate proceedings for acquiring the left over land measuring 8 biswa in Khasra No.45/18, after payment of due compensation to the petitioner.

19. With the aforesaid directions, the present writ petition is disposed of.