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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 7th January, 2025

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W.P.(C) 16100/2023

DAYA KISHAN

.....Petitioner

Through: Mr. Madan Lal Sharma, Ms. Vidhi
Kumar, Ms. Disha Sharma, Mr.
Vikrant Malwal, Adv.
(M:9810693008)

versus

UNION OF INDIA THROUGH LAND ACQUISITION
COLLECTOR & ORS.Respondents

Through: Mr, Sanjay Kumar Pathak, Mr. Sunil
Kumar Jha, Mr. M S Akhtar, Mr.
Mayank Madhu, Mr. Sami S Siddiqui
for R-1. (M:9871658979)
Mr. Karn Bhardwaj, ASC, GNCTD
with Mr. Shubham Singh Rajat Gaba
Mr. Saurabh Dahiya, Adv. for R 2 to
4. (M: 8860024289)
Ms. Manika Tripathy, SC for
DDA.(M:+91 98118 31835)
Mr. Tarun Johri, Mr. Ankur Gupta,
Mr. Vishwajeet Tyagi, Adv. for
DMRC. (M:9818430743)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This is a writ petition filed by the Petitioner-Daya Kishan under Article



226 of the Constitution of India seeking determination and payment of compensation in respect of the subject matter land comprising Khasra No. 31/33 Revenue Estate of Village Tikri Kalan, District West, New Delhi admeasuring an extent of 1 Bigha.

Background

3. The petition presents a peculiar set of facts wherein both the Petitioner and the Respondent authorities have failed to disclose all the relevant and true facts in a timely manner before this Court. The subject matter land was jointly owned by Mr. Shiv Kumar Sharma, Smt. Harnandi, Shri Pitam bar, Shri Janki Prasad and Smt. Bimla Devi. It was acquired by Respondent No.1-Land Acquisition Collector ('LAC') in 1987 vide notification No.F.7(44)/81-L&B(1) dated 12th February, 1987 for a public purpose *i.e.*, for construction of a check-barrier at Tikri border NH 10. Upon the Petitioner-Daya Kishan making a representation on behalf of the previous co-owner Shiv Kumar, the Award No. 11/88-89 was also passed by Respondent No.1-LAC in this regard. The said Award was challenged by one Smt. Bimla Devi in **W.P.(C) 1784/1987**. The said writ petition was dismissed on 28th April, 2005 by a Division Bench of this Court.

“None for the petitioner. This case has been on the “Regular List” of this Court since last week. Today again nobody appears on behalf of the petitioner. Hence, we are left with no alternative but to proceed with the matter in absence of the petitioner.

Challenge in this petition under Article 226 of the Constitution of India is to a notification dated 12th February, 1987 issued under Section 4 of the Land Acquisition Act, vide which the land, including the land of the petitioner in the Revenue Estate of Village Tikri Kalan. was sought to be acquired for a public purpose



namely “Construction of check-barrier at Tikri border, NH-10.”

From the averments made in the writ petition, it is clear that the petitioner did not file any objections under Section 5-A of the Act. Annexure P-6 annexed to the writ petition is a letter submitted by the petitioner/his co-owners in response to the letter issued by the authorities on 14th April, 1987 requiring service of a notice under Section 9 of the Act upon the concerned parties. As no objections under Section 5-A were filed by the petitioner in regard to the acquisition of the land in question, the petitioner would be de-barred from raising any question as to the correctness or validity of the notification dated 26th February, 1987, in view of the judgment of the Supreme Court in the case of Delhi Administration Vs. Gurdip Singh Uban (2000) 7SCC 296.

Furthermore, notification under Section 4 was issued on 12th February, 1987 and in terms of the notification, objections, at best, can be filed within 30 days of publication of notification which was apparently not done by the petitioner. We see no reason to interfere. Accordingly, the petition is dismissed, while leaving the parties to bear their own costs. Petition stands disposed of accordingly.”

4. The case of the Petitioner, however, is that he is the owner of the said land by virtue of certain alleged documents of transfer executed on 1st May, 1984 which include a General Power of Attorney (‘GPA’), an Agreement to Sell (‘Agreement’) and a Will. Ld. Counsel, Mr. Madan Lal Sharma on a specific query from the Court has admitted and conceded that none of these documents are registered. So, the title of the Petitioner to the land is in doubt.
5. Keeping this matter aside, the Petitioner, asserting rights to the land, filed a writ petition challenging the acquisition. The said writ petition being



W.P.(C) 7520/2017 was heard by a Division Bench of this Court and the said writ petition was disposed of vide order dated 31st July, 2018 in the following terms:

“1. This is a petition under Article 226 of Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings with respect to land of the petitioner comprised in Khasra No.31/33, total measuring 1 Bigha, situated in the revenue estate or village Tikri Kalan, Delhi (hereinafter referred as the 'subject land') are deemed to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act') as neither the actual physical possession of the subject land has been taken nor the compensation in respect thereof has been paid to the petitioner.

2. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') was issued on 12.02.1987 and a declaration under Section 6 was made on 26.02.1987. Thereafter, an award bearing no. 11/1988-89 was passed on 10.02.1989.

3. Mr. Anil Kumar, learned counsel for the petitioner submits that since the actual physical possession of the subject land has not been taken and compensation in respect thereof has not been paid, thus the petitioner would be entitled to a declaration under Section 24 (2) of the 2013 Act.

4. Mr. Yeeshu Jain, learned counsel for the LAC submits that neither possession of the subject land has been taken nor the amount of compensation has been paid to the petitioner. Para.5 of the counter affidavit filed by LAC reads as under :-

"That it is submitted that the lands of village Tikri Kalan were notified vide Notification under Section 4 of the Land Acquisition Act, 1894 dated 12.02.1987 which was followed by the Notification under Section 6 of the Act dated 26.02.1987. The Award was also passed vide Award No. 11/1988-89 dated 10.02.1989. The present writ petition has been filed seeking the benefit for the 1 bigha in Khasra 31/33 however the possession of the same could not be taken nor the compensation has been



paid.”

5. *Mr. Jain, learned counsel for the LAC has opposed the petition on the ground that the petitioner is claiming relief based on General Power of Attorney, Will, receipt etc. which cannot confer title on the petitioner.*

6. *On the other hand, Mr. Anil Kumar learned counsel for the petitioner submits that as far as objection with regard to the ownership and title is concerned, the case of the petitioner would be covered by the decision rendered by the Supreme Court in **Govt. of NCT of Delhi vs. Manav Dharma Trust** and another, reported in **2017 (6) SCC 751**.*

7. *Mr. Pawan Mathur, learned Counsel for DDA submits that the land has not been requisitioned by the DDA and therefore, the petition is liable to be dismissed qua the DDA. Relevant para 3(b) of the counter affidavit filed on behalf of the DDA reads as under:-*

“I say that the land in question has not been requisitioned by the respondent no. 2 - Delhi Development Authority and therefore the present petition is liable to be dismissed qua the DDA.”

8. *We have heard learned counsels for the parties.*

9. *Having regard to the observation made by the Apex Court in the case of **Manav Dharma Trust** (Supra), in our view the objection raised by Mr. Jain, learned Standing Counsel for LAC/L&B is misplaced. In the case of **Manav Dharma Trust** (supra). the Apex Court has held as under :*

“28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowner/ affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Sections 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi.”



10. Reading of the counter affidavit filed by LAC makes it abundantly clear that neither physical possession of the subject land has been taken nor compensation has been tendered.

11. Having regard to the submissions made and the categorical assertion made in the counter affidavit filed by the LAC that neither physical possession has been taken nor compensation has been tendered, and since the award having been announced more than five years prior to the commencement of the 2013 Act, we are of the considered view that the necessary ingredients of Section 24 (2) of 2013 Act stand satisfied. The petitioner is entitled to a declaration that the acquisition proceedings initiated under the Act with regard to the subject land are deemed to have been lapsed. It is ordered accordingly.

12. However we make it clear that this order would not confer any title on the petitioner. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction.

13. The writ petition stands disposed of in above terms.

C.M. No. 31007/2017 (Stay)

14. In view of the order passed in the writ petition, the present application stands disposed of.”

6. As can be seen from the above order, the LAC had made a submission that the possession of the land was not taken and neither the compensation was paid. On the basis of the said stand of the LAC, the Division Bench *vide* its judgement dated 31st July, 2018 had declared that the acquisition proceedings are deemed to have lapsed. However, the Court made it clear that the order would not confer any title on the Petitioner whose documents were in doubt. The events which later unfold, however, reveals that the full facts were not placed before the Court.

7. The Petitioner again filed another writ petition seeking demarcation of the said land being ***W.P.(C) 4085/2021***. The said writ petition was disposed



of on 20th July, 2021 with the following directions:

“2. *Petitioner seeks a direction to respondents No.1, 2 and 3 to demarcate the land of the petitioner comprised in Khasra No. 31/33, measuring one Bigha situated in the revenue estate of village Tikri Kalan, Delhi.*

3. *Learned counsel appearing for respondent No.1, 2 and 3 submits that as per their records, there seems to be a dispute between the petitioner and Delhi Metro Rail Corporation with regard to the title of the land.*

4. *Learned counsel appearing for Delhi Metro Rail Corporation submits that there is no dispute with regard to the land of the petitioner allegedly comprised in Khasra No.31/33. He submits that DMRC had acquired land bearing Khasra Nos.38/4, 38/7 and 38/14 and not any land bearing Khasra No.31/33.*

5. *In view of the above statement, the petitioner is directed to appear before the concerned Tehsildar, Nangloi on 28.07.2021 at 11 AM along with relevant documents for processing of his application. The Tehsildar shall thereafter dispose of the application dated 19.02.2019 within a period of two weeks from the date petitioner appears before the Tehsildar.”*

The demarcation has thereafter been carried out accordingly.

8. An RTI application was filed by the Petitioner in 2023 with the DMRC, seeking the status of the land. In response to the RTI application the DMRC stated as under:

“To
Dh Daya Kishan
R/o H No. 707, V&PO-Jaunti
Delhi-10081.

Sub: Acquisition of the land by DMRC for construction of Tikri Border Metro Station.

Ref: 1. Your representation dated 12.07.2023.

2. Demarcation drawing & report of M/s N K Engineers in respect of Khasra No. 31//33 Tikri Kalan, received from the office of Tehsildar, Punjabi Bagh vide No SDM(PB)2022/10354-



55 dated 27.06.2023.

Dear Sir,

With reference to your above cited representation it is informed that the 1-0 Bigha land of Khasra No No 31//33, shown in the demarcation drawing referred to above, broadly falls within the 3605 Sqm land handed over by PWD to DMRC vide handing over Note dated 06.02.2015 (copy enclosed). The said 3605 Sqm land had been requisitioned by DMRC from PWD in the year 2012 and working permission for construction of Tikri Border Metro Station was granted to DMRC vide letter dated 03.07.2014 (copy enclosed).

Construction work at the site was started in the year 2015 and substantial part of station including the work on the said 1-0 bigha land was completed well before the dated of filing of the Writ Petition No 7520/2017, Le. 24th Aug 2017 by you before the Hon,ble High Court.

In view of the above, it is retreated that DMRC that it is in possession of allotted land PWD. Accordingly, you are requested to approach PWD for resolution of your grievance.”

9. The Petitioner has now, therefore, filed the present writ petition seeking payment of compensation or alternatively possession and for production of records. Mr. Madan Lal Sharma, Id. Counsel appearing for the Petitioner has submitted that the events which have transpired reveal that the DMRC has built a station in the said land and therefore his client no longer seeks possession of the land but merely compensation. It is his submission that though the documents in favour of his clients are not registered, the Petitioner is still entitled to compensation in accordance with law.

10. On behalf of the LAC Mr. Sunil Kumar Jha submits that the land is now with the DMRC. But he has no answer upon being queried as to why the full facts relating to transfer of possession from LAC to PWD and then from PWD



to DMRC were not revealed to the co-ordinate Bench while deciding the earlier writ petition.

11. On behalf of the PWD, it is submitted that PWD received the possession in 2014 and the same was handed over to the DMRC in 2015. The relevant portion of the affidavit of PWD is set out below:

*“12. That thereafter, specific working permission in respect of the subject land admeasuring 3605 sqm was granted by Pr. Chief Engineer (PWD) vide letter 03.07.2014, copy of which is enclosed as **Annexure R-5**.*

*13. That accordingly, the subject land admeasuring 3605 sqm was handed over to the Respondent No. 6/DMRC/AEN Sh. Saif Ahmed through PWD JE Sh. Balbir Singh on 06.02.2015. The copy of the handing over note is enclosed as **Annexure R-6**.”*

12. Mr. Tarun Johri, Id. Counsel appearing for the DMRC, in consonance with the PWD’s submission, submits that DMRC received the possession of land in 2015 from PWD and had built the metro station on the said land. It is also submitted that the land is presently a part of Tikri Kalan Metro Station .

13. Therefore, the facts that emerge on the basis of the documents and the pleadings on record are -

- (i) that the land in question was taken over by the PWD from LAC way back in 2014 and handed to the DMRC in 2015,
 - (ii) the said fact was not brought to the notice of the Division Bench which was hearing the writ petition filed by the Petitioner challenging the acquisition i.e., **W.P. (C) 7520/2017**.
 - (iii) Based on the incorrect facts placed by the LAC, that possession has not been taken and compensation has not been paid, the final order was passed on 31st July, 2018 that the acquisition is deemed to have lapsed.
14. Clearly, by the time the said order was passed, the land was no longer



in the possession of the LAC and the Tikri Kalan Metro Station had already been constructed by the DMRC and had been commissioned as well. Considering, the PWD and DMRC were not parties to the said writ petition, the LAC ought to have revealed these facts to the said Division Bench which unfortunately were not revealed.

15. These facts were also well within the knowledge of the Petitioner who claims the ownership of the said land but he chose not disclose the same to the Court. It is not acceptable to the Court that the Petitioner, who claims the rights in the land, was not aware that a Metro Station was built on his land.

16. The overall conspectus that is now presented before this Court is that, despite the acquisition proceedings having deemed to have been lapsed in terms of the Judgement dated 31st July, 2018, the subject matter land had already been taken over by the PWD and thereafter by the DMRC and has been utilised to construct the metro station.

17. Clearly, the said order deserves to be relooked at. The DMRC and PWD may accordingly take steps to file an impleadment application in the said writ petition and seek rectification of the order dated 31st July, 2018.

18. Insofar as the Petitioner is concerned, none of the documents which the Petitioner has presented before this Court are registered. The question as to whether the Petitioner has any right to claim compensation due to lack of proper title is to be considered. In fact, both the co-ordinate Benches of this Court in *W.P. (C) 7520/2017* and *W.P. (C) 4085/2021* have expressed doubt as to the rights of the Petitioner to the said land.

19. Be that as it may, considering the fact the land is now taken over by the DMRC and the Metro Station has been built, the Judgement dated 31st July, 2018 is first required to be reconsidered.



20. Accordingly, let the said writ petition i.e., **W.P.(C) 7520/2017**, be placed before this Court on the next date of hearing. By the said time, the DMRC and the PWD may move appropriate applications in the said writ petition.

21. The PWD shall also place the documents on record to show as to when it obtained the possession from the LAC in terms of its counter-affidavit.

22. List on 19th February, 2025 along with the **W.P. (C) 7520/2017**.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

JANUARY 7, 2025/kr