

Sh. Yashwant Singh And Ors vs Union Of India And Ors on 24 December, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Jasmeet Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2521/2020

SH. YASHWANT SINGH AND ORS.

Through: Mr. Gagan Gupta, Advoc

versus

UNION OF INDIA AND ORS.

Through: Ms. Manika Tripathy an
Shubham Hasija, Advoc
respondent No. 3/ DDA.
Ms. Shobhana Takiar Aa
respondent No. 4/ GNCT

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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24.12.2021

C.M. Nos. 47654- 657/2021

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.
3. For the reasons stated in the application, the delay of 59 days in filing the review petition is condoned.
4. The application stands disposed of.

REVIEW PET. 218/2021 & C.M. No. 47652/2021

5. The petitioners have preferred the present review petition to seek review of our order dated 16.09.2021 passed in the present writ petition. By the said order, we dismissed the writ petition, firstly, on the grounds of delay and laches in approaching the Court, and secondly, on the ground that the case of the petitioners was squarely covered by the judgment of the Constitutional Bench of

the Supreme Court in Indore Development Authority Vs. Manoharlal, (2020) 8 SCC 129.

6. The submission of Mr. Gupta - learned counsel for the petitioner, in support of the review petition, firstly, is that the possession report already placed on record would show that the actual physical possession of the property in question falling in Khasra No.706/119, had not been taken over by the respondents on account of it being built up. This position was clearly recorded in the possession report dated 08.02.1978. The said possession report, inter alia, records the presence of the Revenue and Acquisition Authorities, as well as the officials of the DDA and is titled as "Karwahi Kabja Babat Award No. 102A/72-73 Gram Pipal Thalla".

7. Mr. Gupta submits that the possession of only 522.08 bighas was taken over, and the physical possession of the remaining area was not taken over which included the petitioners' aforesaid land. Mr. Gupta further submits that the fact that the possession of the petitioners' land was not taken has been acknowledged by the respondents in several documents, including those obtained by the petitioners under the Right to Information Act, 2015 („RTI Act ") even after the dismissal of the writ petition. He further submits that the respondents have stated in response to a query raised under the RTI Act that compensation of Khasra No. 706/119 (2-05) was assessed at Rs. 5019.75/-, "as per NM compensation has not been shown paid".

8. The petitioners have also placed on record another response dated 01.11.2021 received from the Office of the Land Acquisition Collector (North) DM (North), Office Complex, Alipur, Delhi-110036 in respect of RTI I.D. No. 541, which states that possession of land bearing Khasra No. 706/119 (2-05) Village Sarai Pipal Thalla acquired vide Award No.102/A/72-73 dated 23/03/77 "as per the NM.....was taken on 08/02/78". It further records that "the possession was taken on 08/02/78 and the statement „A is not available in award file". It further states that "the statement „A is not available in award file".

9. The further submission of Mr. Gupta is that as a matter of fact, possession was not taken over of the acquired land of the petitioners, and even the compensation has not been paid to the petitioners for the said land. He submits that in these circumstances, this Court should have called for the response of the respondents, and should not have dismissed the writ petition without seeking the response of the respondents.

10. In this regard, he has sought to place reliance on the order dated 02.03.2021 - passed by the Supreme Court in Hari Om & Ors. Versus the State of Haryana & Ors., Civil Appeal No. 770/2021, arising from SLP(C) No. 11229/2020, which, inter alia, held that "the High Court was obliged to first record a clear finding of fact on the factum of possession and payment of compensation, as the case may be. Depending on that finding, the High Court could have then answered whether the principle expounded by the Constitutional Bench in Indore Development Authority (supra) was applicable to the case on hand or otherwise". The Supreme Court set aside the order passed by the High Court, and remanded the matter back to the High Court for re-consideration.

11. Mr. Gupta submits that so far as the aspect of delay and laches is concerned, since the petitioners have continued in actual physical possession, there is no delay and laches. He further submits that

the decision in Mahavir and Others Versus Union of India and Another, 2018 (3) SCC 588 relied upon by this Court in the order under Review related to the case where the actual physical possession had been taken over and the acquisition proceedings were complete. He submits that, on the other hand, the acquisition proceedings are not complete in the present case and, therefore, there is no question of delay and laches.

12. Having heard learned counsel for the petitioners, we are of the view that there is no merit in the present review petition, and our order dated 16.09.2021 does not call for review, or re-consideration. As noticed by us, the notification under Section 4 of the Land Acquisition Act in respect of the petitioners' land, was issued way back on 26.09.1966, followed by the declaration dated 30.12.1966 under Section 6 of the Land Acquisition Act. The Award itself was passed on 23.03.1977 bearing the Award No. 102A/72-73.

13. Challenge to the acquisition proceedings initiated and concluded nearly four decades ago was, in our view, clearly barred by delay and laches for the reasons we have already expressed in our aforesaid order.

14. So far as the submission of Mr. Gupta with regard to actual physical possession not been taken over is concerned, it is settled law that it is not even required of the respondents to show that they have taken over actual physical possession of the acquired land, and memorandum in that regard is sufficient. In the present case, the possession proceedings dated 08/02/78 relate to taking over of possession of the land acquired by the aforesaid Award.

15. Merely because the possession proceedings go on to record that actual physical possession of a portion of the acquired land has been taken, whereas the actual physical possession of the other portion of the land - which was found to be built up, was not taken, it does not follow that there are no possession proceedings undertaken in respect of the area of which actual physical possession was not taken. The possession proceedings after setting out the area of which actual physical possession was not taken, goes on to record that the actual physical possession would be taken after undertaking demolition of the structure. The question of carrying out demolition would arise only in respect of the acquired land, as demolition cannot be undertaken by the authorities in respect of structures standing on unacquired land. It is for this reason that in response to the RTI I.D. No. 541, the Office of the Land Acquisition Collector (North), in his response dated 01.11.2021, has stated that possession of the said Khasra No. 706/119 (2-05) was taken on 08/02/78.

16. We may also observe that the said response records the non-availability of statement A in the award file. This fact we have taken notice of since this emphasizes the need for the aggrieved parties to raise disputes in time. The respondents cannot be suddenly asked to answer decades old claims as they would be greatly handicapped with records either getting destroyed or misplaced over a period of time.

17. Merely because the respondents may not be possessed of the record, or may not be able to locate the same, cannot be a reason to allow a highly belatedly and staled claim. Even the response with regard to compensation not been paid to the petitioner, clearly states that the compensation has not

been paid, it nowhere states that the compensation was not deposited for the petitioners land. It would be unfair to the respondents to now require them to answer the stale claim raised by the petitioners. It is for this reason that we are not inclined to call for the same. We, therefore, do not find any merit in the present review petition.

18. Dismissed.

VIPIN SANGHI, J JASMEET SINGH, J DECEMBER 24, 2021 kd/aks