

Bal Kishan (Deceased) Thr Lrs vs Govt. Of Nct Delhi & Ors. on 3 April, 2025

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 4242/2025 & CM APPL. 19626/2025

BAL KISHAN (DECEASED) THR LRS

Through: Mr. Rizwan and Mr.
Advocates

versus

GOVT. OF NCT DELHI & ORS.

Through: Mr. Sanjay Kr. Path
Counsel with Mr. Su
Mayank Dwivedi and
Kapil, Advocates fo
Ms. Mrinalini Sengu
R-3.
Mr. Tarun Johri, Mr
and Mr. Vishwajeet
for R-4.

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Date of D

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J: (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India, inter alia, seeking the following prayers:-

"A. Issue a writ, order, or direction in the nature of Mandamus, directing the Respondents to restore the title of the acquired land bearing Khasra No.446, admeasuring 645 square yards, which forms part of a larger parcel measuring 4 bighas and 9 biswas, situated within the Revenue Estate of Village Jasola, New Delhi, to the Petitioner herein.

B. Issue a writ, order, or direction in the nature of Mandamus, directing the Respondents to forthwith demolish the illegal construction raised on the aforesaid

land bearing Khasra No. 446, admeasuring 645 square yards, forming part of a larger parcel measuring 4 bighas and 9 biswas, situated within the Revenue Estate of Village Jasola, New Delhi.

C. Issue/pass any other such order which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case."

2. It is the case of the petitioner that on 22.06.1989, a notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "LA Act"), was issued to acquire land situated within the Revenue Estate of Village Jasola, New Delhi including Khasra No.446, admeasuring 645 square yards (hereinafter referred to as "subject land") for public purpose. On 22.06.1990, the subject land was notified under section 6 of the LA Act. An award dated 18.06.1992 was passed by the Land Acquisition Officer for the subject land. It is claimed that neither the possession of the subject land was taken nor compensation was paid.

3. It is further stated that on 20.12.2005, an Assignment Deed was executed by the father of the petitioner in favour of the petitioner qua the compensation in respect of the acquired subject land and was duly registered. The petitioner claims that though on 19.01.2006, the possession of the subject land was taken over by respondent no.3/DDA, yet, no compensation was paid to the petitioner. It is further stated that in September, 2010, the respondent no.3/DDA, demolished the structures of the petitioner and on 26.12.2012, the respondent no.3/DDA allotted and handed over the acquired land, including the subject land, to the respondent no.4/DMRC.

4. It is the claim of the petitioner that on 16.12.2014, the respondent no.4/DMRC, exchanged the subject land with certain private individuals, who built shops in 2016. The petitioner lodged a complaint with the office of Sub Divisional Magistrate on 31.01.2017, upon discovering the unauthorized encroachment and illegal construction. It is further stated that between the years 2017 and 2023, the petitioner approached this Court and the Hon'ble Supreme Court. The petitioner had filed W.P.(C) 1295/2017 praying that since neither possession was taken nor compensation paid, in view of the provisions of section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "2013 Act") such acquisition would be deemed to have lapsed. Vide order dated 16.08.2017, the Division Bench of this Court had passed a declaration that the acquisition qua the subject land had lapsed under section 24(2) of the 2013 Act. It is stated that, in an appeal preferred by the respondent no.3/DDA qua the order dated 16.08.2017 of this Court, the Hon'ble Supreme Court following the Constitution Bench judgement in Indore Development Authority vs. Mohanlal; (2020) 8 SCC 129 overturned the judgement of this Court and allowed the appeal.

5. The petitioner prefers the present writ petition on the claim that the respondent no.4/DMRC had exchanged the subject land with certain private individuals which is contrary to the law laid down by the Hon'ble Supreme Court in Royal Orchid Hotels Limited & Anr. vs. G. Jayarama Reddy & Ors.; (2011) 10 SCC 608. Predicated thereon, petitioner seeks restitution of possession coupled with restoration of his title upon the subject land.

6. Learned counsel for the petitioner has forcefully contends that the user department i.e., the respondent no.4/DMRC has, post taking over of the possession of the subject land, violated the law laid down by the Hon'ble Supreme Court in Royal Orchid Hotels Limited (supra). He states that the subject land was acquired under the provisions of LA Act for public purpose. He stoutly contends that once land of a citizen is acquired under the provisions of the aforesaid Act, the same cannot be sold away or alienated in any manner whatsoever by the user department to private individuals. He urges that in the present case, the respondent no.4/DMRC has precisely done that. In support of the aforesaid contention, learned counsel has placed reliance on Agreement for Exchange of Land dated 16.12.2014 placed as Annexure P-8 at page 82 of the present petition. His contention is that once the respondent no.4/DMRC has admittedly given away the acquired land to private parties/individuals, keeping in view the judgment in Royal Orchid Hotels Limited (supra), the petitioner is entitled to restoration/restitution of the subject land with a declaration of title in his name.

7. Apart from the above, learned counsel also relies upon the Assignment Deed dated 20.12.2005 executed in favour of the petitioner to contend that he stepped into the shoes of the recorded owner much prior to the taking over of possession by the respondent no.3/DDA in the year 2006. In other words, learned counsel contended that the petitioner having become the assignee of the subject land prior to the taking over of possession, coupled with compensation having not been paid till date, in view of the violation of the law by the respondent no.4/DMRC, the petitioner is straight away entitled to restitution/restoration alongwith declaration of title to the subject land.

8. We have heard Mr. Rizwan, learned counsel for the petitioner and examined the material on record.

9. Before we assign reasons, it would be apposite to record certain undisputed facts. It is not disputed that the subject land was part of the notification dated 22.06.1989 under section 4 of the LA Act for the purposes of public interest followed by notification under section 6 of the LA Act dated 22.06.1990. Undeniably, the award was made on 18.06.1992. It is trite that upon issuance of notifications under section 4 and 6 of the LA Act, followed by passing of an award under section 11 of the LA Act and the subsequent taking of possession, the acquired land stood vested in the authority which has initiated the land acquisition proceedings as per section 16 of the LA Act. [See: Indore Development Authority (supra)].

10. Learned counsel has laid great emphasis on the Assignment Deed dated 20.12.2005 to assert that the petitioner became an assignee of the subject land much before the actual possession was taken over by the respondent no.4/DMRC to contend that having become a recorded owner, the violation of law laid down by Hon'ble Supreme Court in Royal Orchid Hotels Limited (supra), would entitle restitution of the subject land coupled with declaration of title on the said land. This contention is recorded only to be rejected since we find the same to be fallacious.

11. This is for the reason that section 4 of the Delhi Land (Restrictions on Transfer) Act, 1972 (hereinafter referred to as "DLRT Act") provides that no person except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof which is proposed to be acquired in connection with the scheme

in relation to which a declaration under section 6 of the LA Act for a public purpose has been notified. In view of the admitted facts of the present case of not only the notifications under sections 4 and 6 having played out their effect, award too was rendered much before the alleged Deed of Assignment was executed. Having regard to the nature and effect of the provisions of section 4 of the DLRT Act, the Assignment Deed would be rendered otiose or nugatory. The said document cannot have any force of law having been executed in contravention of section 4 of the DLRT Act.

12. Even otherwise having perused the Assignment Deed dated 20.12.2005 minutely, it is manifest that the assignment by the father of the petitioner in favour of the petitioner is only qua the compensation and not the title or possession of the subject land itself. The intention appears to be only to assign right to claim compensation and nothing more. Thus, it is clear that the said document is limited in its operation. So far as the compensation is concerned, in case the petitioner is entitled, the same can be claimed in accordance with law.

13. Lastly, vide the order dated 24.03.2023, the Hon'ble Supreme Court in Civil Appeal No.1965/2023 titled DDA vs. Balkishan and Ors. has reversed the judgment of this Court dated 16.08.2017 holding that the declaration of deemed lapse of the acquisition proceedings qua the subject land for violating provisions of Section 24(2) of the 2013 Act relying upon the judgment in Indore Development Authority (supra). Having regard to the fact that admittedly possession was taken over in the year 2006 coupled with the judgment of the Hon'ble Supreme Court in the petitioner's own case, no right much less a right to restoration or restitution of the subject land including declaration of title, can at all be countenanced.

14. For the aforesaid reasons, we find that the submissions of the petitioner are unmerited. Consequently, there is no merit in the writ petition and the same is dismissed without any order as to costs.

TUSHAR RAO GEDELA, J DEVENDRA KUMAR UPADHYAYA, CJ APRIL 3, 2025/aj/rl