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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 19.01.2023

Judgment delivered on: 07.02.2023

+ W.P.(C) 4247/2017

DHARAMVIR UDAR AND ORS.

.....Petitioners

Through: Ms.Smita Mann, Advocate.

versus

LAND ACQUISITION COLLECTOR (SW) AND ORS.

..... Respondents

Through: Mr.Sanjay Kumar Pathak, Mr.Sunil Kumar Jha, Mr.M.S. Akhtar, Ms.Rini V. Tigga, Ms.K.K. Kiran Pathak, Advocates for R-1/LAC.
Ms.Shobhana Takiar, SC with Mr.K. Singh, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. A Writ petition under Article 226 of the Constitution of India has been preferred by the petitioners for quashing of order dated 09.02.2017 passed by the Land Acquisition Collector, South West/Respondent No.1 whereby the Reference Petition filed by the petitioners under Section 18 of the Land Acquisition Act, 1894 was rejected as time barred. Consequently, it is further prayed for issuing appropriate writ(s)/order(s)/direction(s) in the nature of mandamus, directing the Land Acquisition Collector, South West

to refer the Reference Petition filed by the petitioners on 08.09.2015 under Section 18 of the Land Acquisition Act, 1894 to the concerned Civil Court for adjudication, in accordance with law.

2. In brief, as per the case of the petitioners, they are the recorded co-owners of large chunk of land comprising Khasra No.59/1 (4-08), 2/1 min. (2-16), 9 min (4-12), 10 (4-16), 11 (4-04), 12 (3-00) and 59/9 min. (0-04) total admeasuring 24 bighas situated in the revenue estate of Village Dhool Siras, New Delhi wherein the petitioners are having 1/3rd share each respectively being the LRs of Shri Gyani Ram. In the above-mentioned land, the petitioners claim to have developed a farm house with compound wall, kothi, two temples, shed, platform, tubewell and main gate in the land of Khasra No.59/9 min. (0-04) and 10.

3. It is further the case of the petitioners that on 13.12.2000, the Govt. of NCT of Delhi issued notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "Act") in respect of total land measuring 3133 bighas 17 biswas situated in revenue estate of Dhool Siras which included the land of the petitioners. Further, on 07.12.2001, the declaration under Section 6 of the said Act was issued followed with notification under section 17(1) on 15.03.2002. The possession of a portion of land admeasuring 23 bighas and 16 biswas was taken on 20.08.2002 after invoking the provisions of Section 17(1) of the Act. However, the possession of Khasra No.59/9 min. (0-04) was not taken by respondent No.1 due to existence of structure/construction in the nature of build up house etc.

Thereafter, an award No.27/2002-03 was passed by respondent No.1/Land Acquisition Collector on 24.10.2002. The compensation in respect of the tubewell and other structure over the acquired land was not assessed/determined by the LAC since the valuation report was yet to be submitted by the PWD. Accordingly, it was observed in the aforesaid award that the compensation for the same would be assessed/determined later on.

4. The possession of Khasra No.59/9 min (0-04) is stated to have been taken by the respondents only on 29.11.2005. Further, in accordance with the directions, the PWD submitted the valuation report in respect of all the structures and a Supplementary Award No.27A/2007-08 was passed by the LAC on 05.12.2008 which included the compensation in respect of tubewell, pump house and boring of the petitioners for a sum of Rs.1,56,516/-.

The grievance of the petitioners is that despite receipt of the valuation report from PWD in respect of other structures i.e. farm house, building, wall gate etc., the LAC did not award any compensation qua the same and neither included in the Supplementary Award. Consequently, a request was made by the petitioners to the LAC to pass another award over the left over structures on 18.01.2013 in writing. However, no action was taken thereupon by the LAC. Left with no other option, the petitioners approached the High Court of Delhi by filing Writ Petition {WP(C) No.3037/2013} which was disposed of vide order dated 10.05.2013 directing the LAC to examine the claim of the petitioners in the light of the valuation report and pass an appropriate order on the application dated 18.01.2013 filed by the petitioners within a period of four weeks.

5. Petitioners further claim that the LAC/respondent No.1 failed to comply with the directions issued by High Court of Delhi in WP(C) No.3037/2013 vide order dated 10.05.2013 and as such they were again constrained to approach the High Court by filing a Contempt Petition, which was later on withdrawn by the petitioners on 19.01.2015 on passing of an order on 17.01.2015 by the LAC. The LAC recorded that Supplementary Award regarding compensation for building (kothi), two temples, shed, compound wall, platform and main gate falling in Khasra No.59/9 would be passed later on. The petitioners, after withdrawing the contempt petition visited the office of LAC/respondent No.1 repeatedly for passing the Supplementary Award.

LAC finally passed an order dated 07.08.2015 and partly accepted the valuation report given by PWD by awarding compensation in respect of building (kothi) in the valuation report. However, he did not award any compensation in respect of other structures mentioned at serial no. 5 to 10 of the valuation report and no reasons were given for discarding the claim of the petitioners.

Petitioners claim that the said order is to be treated as an award for all objects and purposes though nomenclatured as an order.

6. It is further the case of the petitioners that on 08.09.2015, a Reference Petition under Section 18 of the Land Acquisition Act was preferred before the LAC/respondent No.1 for forwarding of the same to the concerned Civil Court for adjudication. The said petition is claimed to be within the period of limitation envisaged under Section 18 from the passing of order by the

LAC on 07.08.2015. However, the Reference under Section 18 of the said Act was declined to be forwarded by the LAC for adjudication by the Civil Court vide order dated 09.02.2017.

7. The Writ Petition has been opposed on behalf of the respondents and in the counter affidavit filed on behalf of respondent No.1/LAC, it is submitted that vast tract of land admeasuring 3133 bighas 17 biswas including the land of the petitioners situated in revenue estate of Village Dhool Siras was notified for acquisition of Dwarka Project 2 vide notification dated 13.12.2000 issued under Section 4 of the Land Acquisition Act, 1894. This was followed by declaration under Section 6 on 07.12.2001. An award No.27/2002-03 was made on 24.10.2002 and possession of land was taken on 20.08.2002. However, possession of Khasra No.59/9 (0-04) was not taken due to built-up house. The compensation of the said land was paid on 15.11.2002 and rest of the compensation was paid on 31.12.2005 after taking possession of Khasra No.59/9 (0-04) on 29.11.2005. It is further submitted that as per LAC record in proportion to their respective 1/3rd share, petitioner Dharamvir was paid Rs.34,80,708/- vide cheque dated 15.11.2002 and Rs.29,244/- vide cheque dated 31.12.2005; petitioner Dalvir Singh was paid Rs.34,80,709/- vide cheque dated 15.11.2002 and Rs.29,244/- vide cheque dated 31.12.2005 and petitioner Karanvir was paid Rs.34,80,709/- vide cheque dated 15.11.2002 and Rs.29,244/- vide cheque dated 31.12.2005.

It is also stated that at the time of announcement of award no.27/2002-03 dated 24.10.2002, the valuation of structures and tube-wells was not taken up since the valuation report was not received from the Public Works

Department (PWD). After receiving the valuation report from PWD, a Supplementary Award No.27A/2007-08 was made on 05.12.2008 and an amount of Rs.1,56,616/- was awarded as compensation as reflected at serial no.58 of the Supplementary Award.

Thereafter, the petitioners filed WP(C) No.3037/2013 raising the grievance that despite the valuation report mentioning the existence of building, (kothi), two temples, shed, compound wall, platform and main gate falling in Khasra No.59/9, 10, no award was made for the same. Further, in compliance to directions passed by the High Court vide order dated 10.05.2013 in WP(C) 3037/2013, the petitioners were requested vide letter dated 02.12.2014 and 23.12.2014 to supply documents. The LAC/ADM examined the claim of the petitioners on the basis of documents supplied by the petitioners and passed an order dated 17.01.2015. It is submitted that the petitioners did not submit certified copies of the permissions by SDM/RA in respect of two temples, sheds, compound wall, platform and main gate and as such the petitioners were not entitled for compensation for the above items. The petitioners were held entitled for compensation for building (kothi) amounting to Rs.3,38,836/- as assessed in the valuation report by PWD.

It is further submitted that the application filed by the petitioners to refer the Reference Petition to the court of Additional District Judge did not fall within the norms/law laid down in Section 18 of the Land Acquisition Act, 1894 and is barred by limitation. Additionally, it is stated that the order dated 07.08.2015 passed by ADM/LAC/South West is not an award but an order, against which the Reference could not be preferred under Section 18.

It is also pointed out that the original award had been passed on 24.10.2002 and the Supplementary Award was made on 05.12.2008 and as such the Reference could have been preferred within six months from 05.12.2008, since no notice was issued to the petitioners under Section 12(2) of the Land Acquisition Act nor were they served or were present at the time of passing of the award or Supplementary Award. The award dated 24.10.2002 is stated to be a complete award. The petitioners are further stated to be aware of both the original award and Supplementary Award way back in the years 2002-03 and 2008-09 but failed to file the Reference before the expiry of six months from the date of the award. The filing of the Reference after a lapse of 13 years of the award is claimed to be barred. Reliance was further placed upon the judgment passed by the Hon'ble Apex Court in ***Mohanji and Anr. Vs. State of UP and Ors. JT 1995 (8) SC 599*** as well as ***State of Punjab and Ors. Vs. Sharanpal Singh & Ors. (1996) 11 SCC 683***.

8. In nutshell, learned counsel for the petitioners contends that order dated 07.08.2015 passed by the LAC is to be treated as Supplementary Award against which the Reference under Section 18 had been filed within the period of limitation. It is further submitted that the initial award No. 27/2002-03 was only limited in respect of the land and even as per the stand of the respondent, the Supplementary Award based upon the valuation report from PWD bearing No.27A/2007-08 was passed but did not consider the valuation of all the structures as made by the PWD. It is urged that having made a Supplementary Award No.27A/2007-08, it does not lie in the mouth of the respondents now to say that further Supplementary Award cannot be

passed by the LAC. Reliance is further placed upon ***Purshotam Behl & Ors. Vs. Union of India & Ors. 275 (2020) Delhi Law Times 16 (DB)***.

Per contra, learned counsel for the respondents contends that the Reference is clearly barred by limitation under Section 18 of the Land Acquisition Act, 1894 and the order passed by LAC on 07.08.2015 awarding compensation for the built up kothi on the acquired land pursuant to directions made by the High Court in WP(C) No.3037/2013 cannot be deemed to be Supplementary Award.

9. In view of above, the issue for determination is, whether the order dated 07.08.2015 passed by the LAC is deemed to be a supplementary award and consequently if the Reference under Section 18 of the Land Acquisition Act, 1894 is within limitation.

10. In order to appreciate the contentions raised by the learned counsels, it may be noticed that in ***Purshotam Behl (supra)*** the challenge in the petition by different owners of land measuring 13.89 acres in revenue estate of Village Malikpur Kohi @ Rangpuri was with reference to notification of intention of acquisition under Section 3A of National Highways Act, 1956 (in short “the NH Act” issued on 12.01.2018 and determination dated 16.01.2019 under Section 3G of the NH Act, calling upon the petitioners to deliver possession of the land within sixty days, failing which physical possession was threatened to be taken with the assistance of police force. It was therein contended that the determination under Section 3G of the NH Act was not final determination as required under the said Act, since the determination was for land only and with respect to determination of the

claim of the petitioners for structures over the said land, another determination was to be done. As such, it was urged that till there is final determination of claim of the petitioners both for land and structures and till the amount so determined is deposited, possession of the land under Section 3E of the NH Act could not be taken.

Para 47 of the said judgment notices that both the NH Act and Land Acquisition Act define 'land' as inclusive of things attached to the earth and permanently fastened to anything attached to the earth and which words in various judgments passed by the Apex Court have been held to include super-structure, trees, standing crops etc. Accordingly, it was held that determination of compensation under the provisions of Land Acquisition Act has to necessarily include determination of compensation for structures, trees, standing crop existing on the land on the date of the acquisition and observations in this regard may be beneficially reproduced:-

“.....However we prefer to hold that the determination of valuation of superstructure, trees, standing crop on the land acquired is under Section 3G, not only owing to the similarity in language in this respect in the NH Act to the Land Acquisition Act and the law as has developed under the Land Acquisition Act but also because, to hold otherwise would amount to the State compulsorily appropriating valuable property of its citizen without valuing the same fully and without depositing any compensation therefor, leaving the citizen in lurch, and which interpretation has to be outrightly discarded. The same would also be contrary to the scheme of the NH Act, which though divests the citizen of title to the land even before the same has been valued and the valuation determined deposited but protects the possession of the citizen till such valuation and deposit; there is no reason to differentiate between land and things permanently attached to the land, in this respect.

Thereafter, the Court examined whether the law requires all components of compensation to be contained in one single document or there

is a bar to more than one award and made observations in para 52 to 54, which are pertinent to be noticed and may be beneficially reproduced:-

*“52. We will first take up the question, whether the law requires all components of compensation to be contained in one single document. In this regard, we find a Full Bench of the High Court of Bombay, as far back as in **Prag Narain v. The Collector of Agra**, MANU/MH/0016/1932, faced with an award for part only of a single block of land, to have held that the Land Acquisition Act did not appear to contemplate that where more than one person is interested in a parcel of land, there should be more than one award relating thereto; however this does not mean that the whole of the land at any one time to be acquired, must necessarily be dealt with in one award; it only means that any one piece of land in which more than one person has an interest for which he can claim compensation, ought not to be made the subject of more than one award; each award should contain within its four corners, the fixing of the value of the land with which it deals. We find a Division Bench of the High Court of Gujarat, thereafter in **Mohamadsarif Hakimji Chippa v. State of Gujarat**, AIR 1967 Guj 269, in the context of Land Acquisition Act, to have held that the legislative intent is that in respect of land under acquisition, all matters referred to in Section 11 between all persons interested, must be decided by one award; to construe them otherwise may lead to anomaly; if the Collector were to have authority to decide the same matters between the same parties more than once, it may happen that he may come to one decision in respect of some piece of land acquired, and another decision subsequently; on all matters concerned under Section 11 between all the parties interested, one award has to be filed and which assumes finality; however the concept of one award does not necessarily imply that it should be contained in a single document; the said decision of the Collector, under given exceptional circumstances, may be contained in more than one document, so long as one or more documents constitute one compendious decision of the Land Acquisition Officer or the Collector; the mere fact that it is contained in more than one document would not amount to two or more separate awards. This Court, in **Lal Singh v. Lt. Governor, Delhi**, MANU/DE/0221/1971 also held that the language used in the provisions of the Land Acquisition Act suggests that the land covered by a notification under Section 6 has to be dealt with as a whole, without being split up and the compensation amount has to be apportioned in the award under Section 11 amongst all the persons known or believed to be interested in the land; there may however be more than one award in exceptional circumstances, provided the said awards are not inconsistent decisions regarding the parcel of land, but constitute one decision in respect of the parcel of land and all matters required to be considered*

under Section 11 concerning all the persons interested in that parcel of land. Thereafter, this Court in *Amar Nath supra* relied upon by the Senior Counsel for NHAI, held that no fault could be found with a Supplementary Award with respect to some of the matters as the award already stood announced and the Supplementary Award submerged itself into the main award, it being only its part. We also find that a Full Bench of the High Court of Gujarat, headed by Chief Justice B.N. Kirpal, in ***Kanchanbhai Jhaverbhai Desai v. State of Gujarat***, MANU/GJ/0211/1994, dealing with a writ petition with the grievance that in the award made and pursuant to which possession had been taken, no compensation had been determined with respect to standing crop and claiming direction for determination and payment of compensation for standing crop, to have held that in respect of the same parcel of land only one award is contemplated and no Supplementary Award is contemplated and the remedy is by way of seeking a reference under Section 18 of the Land Acquisition Act.

53. That brings us to *Mohanji supra* cited by the Counsels for the petitioners as well as the Counsels for the respondents. The said judgment came in the wake of amendment to the Land Acquisition Act which required an award to be made in all pending cases of land acquisition within a period of two years from the insertion of Section 11A and it further provided that all proceedings for acquisition of land in which no award is made within the specified period, would lapse on expiry of that period. The said period of two years expired on 23rd September, 1986. Supreme Court in the said judgment was concerned with an award made on the last date i.e. 23rd September, 1986 but only in respect of vacant land but not for buildings constructed over a portion thereof. It was the contention of the petitioners that since the part award was no award, the acquisition proceedings lapsed. It was held that it could not be said that no award had been made for the land acquired, because admittedly award had been made for the entire land acquired and since no piecemeal award by making a subsequent award after the expiry of the period of two years was contemplated in law, the award dated 23rd September, 1986 must be considered as the whole award made under Section 11, awarding compensation for the entire area of land with no compensation awarded for the building. It was further held that it was open to the petitioners to seek reference, if dissatisfied with the award. The said judgment was also followed in *Sharan Pal Singh (supra)*. Supreme Court, thereafter in ***Harbans Lal Malhotra & Sons Ltd. v. Union of India***, MANU/SC/1393/2002 was concerned with an award for land only, recording that with respect to superstructures, there will be a separate valuation; however without making the said separate valuation, possession of the land was sought to be taken. The three Judge Bench was constituted

on a doubt being expressed with respect to the correctness of *Mohanji and Sharan Pal Singh supra*. However the matter was disposed of, directing compensation as claimed, for the superstructures, to be paid with interest for the delay. Mention may lastly be made of a dicta of the Division Bench of the High Court of Gauhati in ***Fortuna Agro Plantation Ltd. v. Union of India***, MANU/GH/0394/2011. It was held that an award even if made by ignoring some of the factors which in the light of Section 23(1) of the Land Acquisition Act are required to be taken into account, is still an award rendered under Section 11 and the person aggrieved by such an award has the remedy of applying to the Collector to make a reference in terms of Section 18.

54. Thus the law with respect to the provisions of the Land Acquisition Act is, that only one award is envisaged and even if is not with respect to one of the factors to be taken into consideration, the award made is to be deemed to be denying any compensation therefor and the only remedy is of seeking reference under Section 18. One award only has been advocated, only to avoid inconsistencies in determination of valuation of different parcels of land vide the same notification. For this reason it has been held that even where there are more than one award, inconsistencies should be avoided. There is no absolute bar to more than one award.”

It is pertinent to observe that the aforesaid observations take note of the judgment passed in *Mohanji (Supra)* as well as *Sharanpal Singh (supra)* and reference has also been made to *Harbans Lal Malhotra and Sons Ltd. vs. Union of India*, MANU/SC/1393/2002 since the three Judge Bench was constituted on a doubt being expressed with regard to the correctness of *Mohanji* and *Sharanpal Singh (supra)*.

11. It may further be noticed that in *Mohanji and Anr. Vs. State of UP and Ors. (supra)*, the question for consideration was whether no award had been made under Section 11 of the Land Acquisition Act in the proceedings to result in lapse of the entire proceedings for the acquisition of land since the determination of compensation for the building in addition to the compensation awarded for the entire land was made on a subsequent date after the expiry of the specified period of two years under Section 11A of the

Land Acquisition Act. It was held by the Hon'ble Apex Court in para 5 that since compensation had been determined in the award so made for the entire area of 0.99 acres and since no piecemeal award by making a subsequent award after the expiry of the period of two years is contemplated in law, the award dated 23.09.1986 must be construed as the whole award made under Section 11 of the Land Acquisition Act awarding compensation for the entire area of 0.99 acres with no compensation awarded for the building. It was held that the appellants, therefore, had the right to claim compensation for the building by seeking a Reference under Section 18 of the Act treating the award as one in which compensation had been determined and awarded only for the entire land measuring 0.99 acres but no compensation was awarded for the building therein. In view of above, the contention that the entire proceedings for acquisition of land had lapsed by virtue of section 11A was not accepted.

12. In *State of Punjab & Ors. Vs. Sharanpal Singh & Ors. (supra)*, it was contended before the High Court that the award was not in conformity with Section 11 of the Land Acquisition Act inasmuch as the award determined the compensation for the land only and the amount of compensation regarding the superstructure and trees standing on such land was left to be decided separately.

Setting aside the orders passed by the High Court and relying upon *Mohanji Vs. State of UP (supra)*, it was held by the Hon'ble Supreme Court that the ratio in *Mohanji Vs. State of UP (supra)* squarely applied to the facts of the case and the impugned award dated 25.03.1985 within the period specified in Section 11A must be construed as an award under Section 11 in

the proceedings for the acquisition of the land in question and the contentions to the contrary cannot be sustained. However, the Court left open the rights of the respondents to claim compensation for the building/trees in accordance with law treating the award already made as one not awarding any compensation for the building/trees.

13. Reverting back to the facts of the present case, it may be observed that award no.27/2002-03 in terms of Section 11 of the Land Acquisition Act was passed in respect of the entire land except for the structures and tube-wells etc. for which the Supplementary Award No.27/2007-08 dated 05.12.2008 has been passed. Admittedly, the Supplementary Award only considered the valuation for the tube-wells for Rs.1,56,516/- and did not award any compensation for the remaining structures. As such, having itself passed a Supplementary Award, it does not lie in the mouth of the respondents to contend that no Supplementary Award can be passed for valuation of the remaining structures in respect of which the valuation had been made by PWD but were not considered by the LAC, in the light of observations made in *Purshotam Behl & Ors. Vs. Union of India & Ors. (supra)*.

However, the matter needs to be further considered in view of the fact that instead of preferring a Reference under Section 18 of the Land Acquisition Act in respect of the compensation assessed by the LAC in the Supplementary Award No.27A/2007-08 dated 05.12.2008, the petitioners preferred a Writ Petition No.3037/2013 for directing the respondent LAC for consideration of the application dated 18.01.2013 filed before the ADM/LAC/South West for the structures raised on the acquired land. The said Writ Petition was disposed of vide order dated 10.05.2013 directing the

LAC to pass an appropriate order on application dated 18.01.2013 on which the orders were finally passed by the LAC on 07.08.2015.

The petitioners in terms of aforesaid order, have been thereafter held to be entitled for sum of Rs.3,38,836/- in respect of building/kothi then existing on the acquired land belonging to the petitioners along with solatium under Section 23(2) and interest. However, the claim in respect of two temples, sheds, compound wall, platform and main gate has been rejected since the petitioners failed to submit the requisite permissions from the competent authority.

We are of the considered view that after passing of Supplementary Award No.27A/2007-08 dated 05.12.2008, in case the petitioners were still aggrieved regarding non-compensation in respect of the structures existing on the acquired land, they were required to file Reference under Section 18 of the Land Acquisition Act, 1894. However, for the reasons best known, petitioners preferred a representation before LAC followed by Writ Petition before the High Court. In the light of the settled position of law and as envisaged under Section 11 of the Land Acquisition Act, 1894, law contemplates only passing of one Award in respect of the same parcel of land and no Supplementary Award is contemplated. In case of any grievance regarding non determination of compensation regarding any structure, crops etc., the remedy is only by way of seeking Reference under Section 18 of the Land Acquisition Act within the period of limitation prescribed therein. In view of above, the order dated 07.08.2015 passed by the LAC pursuant to directions of the High Court in WP(C) 3037/2013 cannot be treated as a Supplementary Award. In case the aforesaid order dated 07.08.2015 passed

by the LAC pursuant to directions passed in WP(C) No.3037/2013 is treated as a Supplementary Award, the same would not only be contrary to the provisions of Section 11 of the Land Acquisition Act but also result in an unending process wherein separate Supplementary Awards in respect of the same parcel of land would continue to be passed. The aforesaid determination of compensation vide order dated 07.08.2015 by the LAC for the kothi is only an equitable relief since the State cannot divest citizens of valuable property without valuing the same fully and depositing the compensation.

Since the petitioners failed to file any Reference against the original award dated 24.10.2002 and Supplementary Award dated 05.12.2008 within the stipulated period, the Reference Petition preferred by the petitioners based upon order dated 07.08.2015 is clearly barred by limitation prescribed under Section 18 of the Land Acquisition Act, 1894. For the foregoing reasons, we do not find any infirmity in the stand taken by the LAC in this regard.

The Writ Petition is accordingly dismissed. Pending applications, if any, also stand disposed of. No order as to costs.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

FEBRUARY 07, 2023/sd