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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 31.05.2022

Judgment delivered on: 06.07.2022

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W.P (C) No. 8312 OF 2022

CITICAP HOUSING DEVELOPMENTS LTD

....Petitioner

versus

UNION OF INDIA & ORS

....Respondents

Advocates who appeared in this case:

For Petitioners : Mr. Pawanjit Singh Bindra, Senior Advocate
alongwith Mr. Santosh Kumar Routa, Advocate.

For Respondents : Mr. Rishabh Sahu, Advocate for respondent No. 1.

Mr. Sudhir Nandrajog, Senior Advocate alongwith
Ms. Mrinalini Sen for respondent No. 3/ DDA.

Mr.Yeeshu Jain, Advocate with Ms. Jyoti Tyagi,
Advocate for respondent No. 5/ LAC.

CORAM:

HON'BLE MR.JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G E M E N T

GAURANG KANTH, J.

1. The Petitioner has filed the present Petition, inter alia, seeking a direction against the Respondents to hand over / restore back the vacant and peaceful possession of the land bearing Khasra No. 965 measuring (0-13) in Village Bahapur, Tehsil Kalkaji, New Delhi ("**land in question**"). In the alternative, the Petitioner is seeking a direction against the Respondents to acquire the land in question under the Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013 and pay compensation to the Petitioner

or direct the Respondents to allot an alternative plot / residential house in the same locality of equal size having the same price as that of the land in question.

Facts as stated in the Petition

2. It is the case of the Petitioner that Khasra No. 965 situated in the revenue estate of Village Bahapur, Tehsil Mehrauli is a piece of land measuring 1 Bigha 7 Biswa. Out of the said Khasra, the Government acquired a land measuring 14 Biswa vide declaration under Section 3 of the Resettlement of Displaced Persons Land Acquisition Act, 1948 vide notification No.F.1(71)/48 LSG (1) dated 26.03.1949. The remaining land of 13 Biswa out of Khasra No. 965, i.e., the land in question, was not acquired by the Government and the same was in possession of its respective owners.

3. An agreement to sell dated 11.08.1986 was entered between (i) Sh. Chandgi Ram s/o Sh.Khes Chand; (ii) Sh. Jit Ram s/o Sh. Ramji Lal; (iii) Sh. Surender Singh s/o Sh. Zile Singh; (iv) Sh. Mahinder Singh s/o Sh. Zile Singh; (v) Smt. Kamlesh d/o Sh. Zile Singh; (vi) Smt. Indra d/o Sh. Medh Singh; (vii) Smt. Gulbir Verma wife of Sh. Manga Ram; (viii) Sh. Rakesh Kumar s/o Sh. Manga Ram; (ix) Smt. Prem d/o Sh. ManSingh; (x) Sh. Ajit Singh s/o Sh. Medh Singh; (xi) Smt. Minakshi d/o Sh. Manga Ram; (xii) Sh. Gagan s/o Sh. Manga Ram; and (xiii) Sh. Jai Bhagwan s/o Sh. Man Singh (**“farmers”**) as sellers and M/s Aavishkar Estates Pvt. Ltd as buyer for the sale of the said land in question. M/s Aavishkar Estates Pvt. Ltd filed a suit for specific performance being Civil Suit No.36/93 titled as M/s Aavishkar Estates Pvt. Ltd Vs Chandgi Ram &Ors before this Court. During the pendency of the said Civil Suit, M/s Aavishkar Estates Pvt. Ltd, with the consent of the farmers and with the permission of this Court, assigned all its rights, title and interest in the land in question in favour of the Petitioner. The said Civil Suit was compromised in terms of IA No. 4916/13. In pursuance of the order dated 15.07.1993 passed by this Court in Civil Suit No. 36/93, the Registrar of this Court executed the sale deed dated 08.11.1993 in favour of the Petitioner. In terms of the said registered sale deed

dated 08.11.1993, the Petitioner is claiming itself to be the absolute owner of the land in question. Further, the land in question is mutated in the name of the Petitioner in the revenue records.

4. It is the case of the Petitioner that the land in question was in illegal possession of the Respondent No.3 (DDA) and hence they approached the Respondent No. 3 for handing over the possession of the land in question to the Petitioner. As Respondent No.3 failed to take any action on the said request, Petitioner approached this Court in W.P(C) 5204/1997. This Court, vide order dated 01.12.1997, was pleased to direct the parties to maintain status quo with regard to the land in question. The said Writ Petition was finally disposed of by this Court vide order dated 07.01.2003, which, *inter alia*, reads as follows:

“The petitioner was aggrieved by what was stated to be the contemplated action of the Respondent in respect of Khasra No.965 in the land of the petitioner measuring 650 sq.yards located in revenue estate of village Bahapur, Chirag Delhi, Tehsil Mehrauli.

In the counter affidavit it is stated that no action has been taken in the Khasra No. 965 but demolition notice was taken in respect of the land in Khasra No. 976 which adjoins Khasra No.965. Khasra No. 976 was acquired and placed at the disposal of respondent DDA. It is also not disputed that demarcation proceeding are separately going on. The submission of learned counsel for the respondent based on the counter affidavit which is already on record shows that the respondent is only protecting its own land and it is taking no action against the land of the petitioner.

In view thereof no further orders are called for since there is no threatened action against the land of the petitioner and the writ petition stands disposed of.”

5. During the pendency of the aforesaid Writ Petition, the Petitioner applied for demarcation of the land in question with the SDM (Kalkaji). The demarcation was carried out on 18.03.2001 in presence of SDM Kalkaji, Tehsildar (DDA), Tehsildar (Slum and JJ Dept), Patwari (MCD), Kanoongo (MCD), Area Kanoongo, Area Patwari etc. The said demarcation report

concluded that the land in question is the part of a developed colony, however, the exact location of the land in question could not be identified during the demarcation proceedings.

6. It has been contended by the Petitioner that they have issued a legal notice dated 04.06.2010 to the Delhi Jal Board asking them to vacate the land in question. However, no positive response with regard to the said legal notice was received by the Petitioner.

7. The Petitioner filed another Writ Petition being W.P(C) No. 536/2011 before this Court. In the said proceedings, Land Acquisition Collector (South) filed Counter Affidavit, which, *inter alia*, stated:

“4. That the Khasra number in question, i.e., 965, comprising of the land measuring 1 bigha 7 biswa situated in the revenue estate of Village Bahapur. Out of the total land, only 14 biswa of land falling in Khasra No.965 was acquired by the Government at the public expenses for a public purpose, namely, for the construction of Kalka Colony for there settlement of the displaced persons, Land Acquisition Act, 1948.

5. That a declaration under Section 3 of the Resettlement of the Displaced Persons Land Acquisition Act, 1948 was made vide notification dated 20.03.1949. An offer was made to the individuals by the competent offices, who was also the Land Officer, Delhi Improvement Trust. In most cases, the individual landowners accepted the offers and had collected the money from the competent officer. As far as the land measuring 13 biswa in Khasra No.965, Village Bahapur (subject matter of the present petition) is concerned the same is not acquired and as per the available records maintained by the office of the LAC.”

8. The W.P(C) No. 536/2011 was finally disposed of vide order dated 18.01.2012, which recorded the following:

“1. The petitioner has placed on record a copy of the Aks Shjara which is stated to be the document mentioned at para-3 of the recital clause of the Sale Deed dated 08.11.1993 executed by the Registrar of the Delhi High Court in his favour.

(Annexure P-1). The aforesaid document was required to be placed on record to establish the manner in which the plot of land, subject matter of the Sale Deed admeasuring 650 sq. yds, (13 biswas) out of Khasra No.965 situated in village Bahapur, Tehsil, Mehrauli, New Delhi was bounded.

2. Learned Senior Counsel appearing for the petitioner states that the pleadings in the present petition qua respondents No.2 and 3 are complete. While it is the stand of respondent No.2 DJB that booster pumping station has been in existence at the site since the year 1951 and the same had been handed over to the predecessor-In-interest of respondent No.2 in the year 1970 and further, that respondent No.2 is not in occupation of any land belonging to the petitioner as alleged by him, respondent No.3/LAC has filed a counter affidavit stating inter alia that the land, subject matter of the present petition, namely, land admeasuring 13 biswas in Khasra No.965 has not been acquired as per the records available in the Office of the LAC.

3. On 27.07.2011, while recording the submissions of the respective parties, this Court was prima facie of the opinion that it appears to be a case of disputed identity of land. Further, in view of the fact that the petitioner had placed on record a copy of the Sale Deed dated 08.11.1993 but had not enclosed therewith the site plan enclosed as Annexure-D to the Sale Deed, directions were issued to him to place on record the said document. Accordingly, a copy of the Aks Shajra has been placed on record.

4. In view of the fact that the identity of the land owned by the petitioner in terms of the Sale Deed can be established only upon carrying out a demarcation thereof by the Revenue Authorities, the present petition is disposed of with liberty granted to the petitioner to approach the Revenue Authorities for demarcation of the land, subject matter of the Sale Deed dated 8.11.1993. As and when the petitioner makes such a request, the Revenue Authorities shall take necessary steps to undertake demarcation so as to identify the land purchased by the petitioner on the basis of the aforesaid Sale Deed specifically described in Annexure-D which has been mentioned in para-3 of the Sale Deed. The demarcation shall be conducted by the Revenue Authorities in a time bound manner and preferably within a period of four months from the date of receipt of such a representation from the petitioner. It is further directed that the Revenue Authorities shall take necessary steps

to notify the respondent No.2/DJB and respondent No.3/LAC as to the date and time when the demarcation is proposed to be conducted so that the concerned officers from the said Departments arrange to remain present at the site. After such intimation, the absence of the officers of the said Departments on the relevant date and time, shall not be available as a ground to lay a challenge to the demarcation report at a later stage.

5. In case the petitioner is aggrieved by the demarcation report, it shall be entitled to seek its remedies as per law.

6. The petition is disposed of."

9. That as the Respondents failed to comply with the order dated 18.01.2012, the Petitioner filed Contempt Petition, CCP No. 77/2013. This Court, vide order dated 09.12.2014, was pleased to dispose of the said Contempt Petition, observing, *inter alia*, as follows:

"After some arguments, there is consensus between the parties that demarcation proceedings shall be carried out by the respondents by TSM method in accordance with the order dated 18th Jan, 2012 passed by a co-ordinate Bench of this Court in WP(C) 536/2011. The cost for the demarcation shall be deposited by the petitioner within a period of two weeks. Thereafter, the demarcation is directed to be carried out within a period of four weeks.

With the aforesaid order and direction, the present contempt petition and application stands disposed of."

10. That in pursuance of the direction of the order dated 18.01.2012 passed in W.P (C) No. 536/2011, the office of the SDM, Kalkaji carried out demarcation of the entire Khasra No. 965 and submitted the report on 08.02.2018. Since there was some calculation mistake in conversation of areas mentioned in sq. yards, the surveyor submitted a corrected table with the area statement on 24.04.2018. Relevant portion of the said demarcation report dated 08.02.2018 records the following:

".....According to marks, the boundary wall of Delhi Jal Board

does not fall in Khasra no.965. Some part of the park, and other park, DDA flats of 56 Block and way falls in Khasra no. 965. Its detailed report is recorded in the computerised map prepared by Dhyani Surveyor. As per record, ownership of Khasra No. 965 (0-13) biswa is recorded of Citicap Housing Development Ltd and the ownership of Khasra No. 965 Min area 0-14 biswa is recorded as government in possession. As per demarcation TSM Khasra No. 965 area (1-7) is situated in CR Park and Tatima of Khasra No. 965 have not been made. Due to this it cannot be said that where the private land will fall and the government land will fall. But the entire land of Khasra No. 965 has been used by the government. Which also includes private land. Therefore no problem has been faced during demarcation. Demarcation concluded.”

11. That the Petitioner thereafter filed various representations with the Respondents for acquiring the land in question and to award market value of the said land as compensation to the Petitioner or in the alternative, to allot another plot to the Petitioner having same market value as that of the land in question. However, no response was received from the Respondents. The Petitioner is therefore constrained to file the present Writ Petition.

Submissions on behalf of the Petitioner

12. Mr. Pawanjit Singh Bindra, Ld. Senior Counsel for the Petitioner submitted that the Respondents have deprived the Petitioner of its valuable rights without following the due process of law. No one can be deprived of his/her property without payment of adequate and fair compensation. It is the contention of the Ld. Senior Counsel for the Petitioner that it is an admitted position that the Petitioner is the registered owner of the land in question and no acquisition has ever taken place with respect to the said land.

13. The Ld. Senior Counsel for the Petitioner relied upon the decision dated 08.01.2020 passed in the case of ***Vidya Devi Vs State of Himachal Pradesh***, Civil Appeal Nos. 60-61 of 2020 to substantiate that the State cannot dispossess a citizen from his property except in accordance with the procedure established

under the law. The Petitioner further relied upon the case of ***Sukh Dutt Ratra & Anr. Vs. State of Himachal Pradesh & Ors.*** reported as **2022 SCC Online SC 410** to submit that the State cannot, merely on the ground of delay and laches, evade its legal responsibility towards those from whom their private property has been expropriated.

14. The Ld. Senior Counsel for the Petitioner further submitted that there are no disputed questions of fact involved in the present case and therefore, the present Writ Petition under Article 226 of the Constitution of India is maintainable.

15. It has been argued on behalf of the Petitioner that there was no bar on the erstwhile owners to sell the land in question as the same was never acquired by the Government. He argues that the land in question has been sold to the Petitioner, who is the sole and absolute owner of the said land. He further argues that even if it is assumed that the Petitioner was never put in possession of the land in question, the Petitioner, being the owner of the land in question, has a right to seek compensation in respect of the said land.

Submissions on behalf of the Respondents

16. Mr. Sudhir Nandrajog, Learned Senior Counsel appearing on behalf of Respondent No. 3/ DDA submitted that present Writ Petition is not maintainable as disputed question of facts are involved in the present case and the same can only be effectively adjudicated before a civil Court having appropriate jurisdiction. In order to support his contention, the Learned Senior Counsel has placed reliance on the Judgment dated 03.12.2018 passed in the case of ***Roshina T. Versus Abdul Azeez K.T., (2019) 2 SCC 329.*** Learned Senior Counsel further submitted that the sale deed dated 08.11.1993 is a collusive attempt to grab a government property. He further submitted that the land was purchased in the year 1993 and the Petitioner has not made even a single averment in the entire petition as to when the petitioner took possession

of the land. Learned Senior Counsel further sought dismissal of the petition on the ground of delay and laches as the land in question was purchased in the year 1993 and the present petition for grant of possession/compensation has been filed in the year 2022.

Legal Analysis based on the facts of the present case

17. We have heard the Counsel for the parties and also examined the documents placed on record by the Petitioner and the Judgments relied upon by the parties.

18. From the perusal of the present writ petition, the following facts emerge:

- (1) The Petitioner became the owner of the land in question by virtue of a registered sale deed dated 08.11.1993 duly executed by the Ld. Registrar of this Court in favour of the Petitioner.
- (2) The representations placed on record by the Petitioner reveal that the farmers were in possession of the un-acquired land. However, the physical possession of the land in question was never handed over to the Petitioner.
- (3) As per the pleadings of the Petitioner in the Writ Petition, it appears that the Petitioner approached the Respondent No.3 for the first time on 17.11.1997 for obtaining possession of the land in question, despite of the fact that the sale deed in favour of the Petitioner was executed on 08.11.1993.
- (4) The present Writ Petition has been filed by the Petitioner decades after its alleged dispossession.
- (5) The Petitioner placed on record two (2) demarcation reports, however, the exact identification of the land in question could not be verified in any of the said reports. In fact, the exact identification of the land in question is in dispute even as on date. As per the first demarcation report, part of the land in question is in

possession of Delhi Jal Board whereas as per the second demarcation report, the land in question is in possession of DDA.

- (6) As per the Counter Affidavit filed by the Delhi Jal Board in W.P (C) No. 536/2011, booster pumping station has been in existence at the site since the year 1951 and the same had been handed over to the predecessor-in-interest of the Delhi Jal Board in the year 1970.

19. It is no more *res integra* that the remedy provided in a writ jurisdiction is not intended to supersede statutory remedy. The High Court has the discretion to refuse to grant any writ if it is satisfied that the aggrieved party has an adequate or suitable relief elsewhere. In the case of **Baburam Prakash Chandra Maheshwari v. Antarim Zila Parish Ad Now Zila Parishad, (1969) 1 SCR 518**, the Hon'ble Supreme Court held that;

“3. It is a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by this Court in Rashid Ahmed v. Municipal Board, Kairana [1950 SCR 566] “the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs” and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefore. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the court may therefore in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted.”

(Emphasis Supplied)

20. Further in ***State of Bihar v. Jain Plastics and Chemicals Ltd., (2002) 1 SCC 216 : 2001 SCC OnLine SC 1374***, the Hon'ble Supreme Court reiterated that;

“3.It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.”

(Emphasis Supplied)

21. The Hon'ble Supreme Court in the case of ***Syed Maqbool Ali Vs State of Uttar Pradesh reported as 2011 (15) SCC 383***, with regard to delay in filing a writ petition, especially when such filing is made decades after dispossession from the subject land, observed that:

“High Courts should also be cautious in entertaining writ petitions filed decades after the dispossession, seeking directions for acquisition and payment of compensation. It is not uncommon for villagers to offer/donate some part of their lands voluntarily for a public purpose which would benefit them or the community - as for example, construction of an access road to the village or their property, or construction of a village tank or a bund to prevent flooding/erosion. When they offer their land for such public purpose, the land would be of little or negligible value. But decades later, when land values increase, either on account of passage of time or on account of developments or improvements carried out by the State, the land holders come up with belated claims alleging that their lands were taken without acquisition and without their consent. When such claims are made after several decades, the State would be at a disadvantage to contest the claim, as it may not have the records to show in what circumstances the lands were given/donated and whether the land was given voluntarily. Therefore, belated writ petitions, without proper explanation for the delay, are liable to be dismissed.”

22. Considering the facts of the present case in the light of the law laid down by the Hon'ble Supreme Court in ***Syed Maqbool Ali*** (Supra), this Court is of the

considered view that the present matter involves disputed questions of fact which cannot be adjudicated in a writ petition. The Petitioner claims to be the purchaser of the land in question. However, it appears that the Respondents were in possession of the land in question even before the execution of the sale deed in respect of the said land in favour of the Petitioner. There appears to be nothing on record to show that the vacant possession of the land in question was ever handed over to the Petitioner. The identity of the land in question is still under dispute and the issue as to in whose possession is the land in question is yet to be established. How, when and under what circumstances, the Respondents came into possession of the land in question is also to be ascertained. All these facts, according to this Court, have to be established by leading evidence in accordance with law. The Petitioner has to establish its right under the law to claim the substantial relief as claimed in the present Writ Petition. Merely by placing on record the Sale Deed will not absolve the Petitioner from its burden to establish its right to claim compensation in respect of the land in question when the factum of possession in favour of the Petitioners not established from the documents available on record. In view of several factual issues which still remain open for adjudication in the light of evidence, therefore, the Writ Petition is not the appropriate remedy for the Petitioner.

23. The Ld. Senior Counsel for the Petitioner relied upon **Vidya Devi** (supra) Civil Appeal Nos. 60-61 of 2020 to substantiate that the state cannot dispossess a citizen from his/her property except in accordance with the procedure established under the law. In the said matter, the appellant was an illiterate widow staying in the rural area. She was the original owner of the subject property and the Respondent State admitted the fact that they took the land of the appellant for construction of road without acquiring the land or paying compensation. In addition, as per the directions of the Court, the Respondent

State acquired the land of the similarly situated people and paid compensation to them. The appellant, being an illiterate widow staying in the rural area, could not take up timely measures to approach the Court. Thus, considering the overall facts of the case, with an intention to do substantial justice to the parties, the Hon'ble Supreme Court, invoked its extra ordinary jurisdiction under Article 136 and 142 of the Constitution and granted the relief to the appellant therein. In the present case, the Petitioner is a subsequent purchaser who purchased the land in question from the earlier original/ recorded owners, however, there is nothing on record to show that the possession of the said land in question was handed over to the Petitioner. Moreover, the Petitioner is a Company doing commercial transactions and cannot be equated with an illiterate widow residing in the rural area as was the case in **Vidya Devi** (supra). Additionally, the identity of the land in question and the fact as to who is in possession of the said land in question is also under dispute. The facts of the present case are considerably different from the facts in the case of **Vidya Devi** (supra). Therefore, the Petitioner cannot be extended the relief as granted to the appellant in the case of **Vidya Devi** (supra).

24. The Ld. Senior Counsel for the Petitioner also relied upon **Sukh Dutt Ratra** (supra) to submit that the State cannot merely, on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated. In **Sukh Dutt Ratra** (supra), the State admitted the fact that they utilised the appellant's land for the construction of road without paying compensation. Unlike in the present case, the appellants in the case of **Sukh Dutt Ratra** (supra) were owners in possession of the subject land in question. Further, there was no dispute with regard to the identity of the land under dispute. The Hon'ble Supreme Court, in view of the facts and circumstances of the said case, invoked its extra ordinary jurisdiction under Article 136 and 142 of the Constitution of India and granted relief to the appellants therein. After

examining both the cases relied upon by the Counsel for the Petitioner, this Court is of the considered opinion that the facts of both the cases are different and distinguishable from the facts of the present case and therefore, the ratio laid down by the Hon'ble Supreme Court in the aforesaid two judgements are not applicable to the facts of the present case.

25. In view of the facts and the reasoning as discussed herein above, this Court is not inclined to exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India and the present Writ Petition is accordingly dismissed. The Petitioner is however at liberty to pursue other remedies as available under the law for establishing its rights to claim substantial reliefs as claimed under this Petition. It is clarified that this Court has examined the matter on the limited issue of its maintainability and no opinion has been expressed on the merits of the Petition. The parties are left to bear their own cost.

**GAURANG KANTH
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

JULY 06, 2022