* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 11.11.2010
% Date of decision : 24.12.2010

\+ WP (C) No.3823-25/2006

PRITHI PAL SINGH & ORS. ... ... PETITIONERS

Through : Mr.Ravinder Sethi, Sr.Adv. with Rakesh Kumar Garg, Mr.Rajiv Kumar Ghawana and Mr.Puneet Sharma, Advocates.

- V E R S U S -

LIEUTENANT GOVERNOR & ORS..... RESPONDENTS

Through : Mr.Sanjay Poddar, Advocate for R-1 to R-3.
Mr.Ajay Verma and Mr.Amit Mehra, Advocates for R-4/DDA.
None for R-5.
Ms.Saroj Bidawat and Mr.Hari Om Sharma, Advocates for R-6/MCD.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE VALMIKI J.MEHTA

Whether the Reporters of local papers may be allowed to see the judgment? YES

To be referred to Reporter or not? YES

Whether the judgment should be reported in the Digest? YES

SANJAY KISHAN KAUL, J.

1. The petitioners purchased land measuring 5 bighas and 2 biswas in khasra no.42/2 situated in the

Revenue Estate of Village Humayupur along with some built up structure vide a sale deed dated 19.10.1951.

2. It is the claim of the petitioners that they constructed a bunglow and an ice factory on their land and with the passage of time, an unauthorized colony known as Krishna Nagar Colony came up on the adjoining land. The petitioners claim that their land is also a part of the lay out plan of the said unauthorized colony which had been regularized by the respondents vide Resolution No. 62 dated 25.06.1981. A notification was issued under Section 4 of the Land Acquisition Act, 1894 ('the said Act' for short) on 03.09.1957 which included the lands falling in Khasra no.42 of which the land of the petitioners being khasra no.42/2 was a part.

3. In the meantime, the DDA was constituted under the Delhi Development Act, 1957 and MPD-1962 came into force on 01.09.1962. A declaration under Section 6 of the said Act was issued on 20.02.1963 which included the land measuring 1 bigha and 2 biswas of the petitioners followed by an award no.1662 dated 15.01.1964 pertaining to the same and possession was also taken over. The second declaration under Section 6 of the said Act was, however, issued on 04.01.1969 which included the land measuring 5 bighas and 2 biswas situated in khasra no.42/2. The

petitioners claimed silence on the part of the authorities thereafter till the notices were issued under Sections 9 and 10 of the said Act on 26.12.1975. The petitioners laid a challenge to the acquisition proceedings by filing Civil Writ Petition No.641/1978 but the same was withdrawn on 29.08.1978 as the writ petition was belated. This resulted in an award bearing no.38/78-79 being passed on 23.01.1979 in respect of the suit land which assessed the compensation for the land and structure thereon.

4. A second endeavour was made by the petitioners by filing a Civil Suit No.82/1979 before the Sub-Judge Delhi seeking a declaration that the land acquisition proceedings culminating in the award dated 23.01.1979 were void, illegal and nullity on account of unreasonable delay. The petitioners were enjoying interim relief in the suit stated to be in pursuance to an order of the Appellate Court.

5. A representation dated 16.07.1998 was, however, filed to the LG during the pendency of the suit for de-notification of the land under Section 48 of the said Act. In pursuance to the representation, the Land and Building Department of the Govt. of NCT of Delhi sought some details from the SDM/LAC vide its letter dated 18.08.1998 including in respect of the

possession at site and built up structure on the land in question. The SDM/LAC vide its letter dated 25.09.1998 confirmed that the possession had not been handed over to the concerned Department and that the physical possession of the land in question was with the petitioner No.1. There was a residential house and factory like structure with a boundary wall stated to be constructed on the land in question and no compensation had been paid. The factum of suit no.82/1979 pending in the Court of Sub-Judge was also pointed out. This is also stated to have been confirmed by the Director (LM) vide letter dated 21.09.1998.

6. In view of the aforesaid facts, the case of the petitioners was put up before the De-notification Committee in its meeting held on 27.01.1999 when it was resolved that the land be inspected by a Sub Committee and a report be submitted. The Sub Committee inspected the land on 05.05.1999 and found that the land within boundary in physical possession of petitioner No.1 included khasra no.48/4 in addition to khasra no.42/2, possession of which was reported to be taken over by DDA but continued to be in unauthorized occupation of petitioner no.1. However, part portion of khasra no.42/2 fell outside the boundary wall and formed a part of the service

lane. The built up structure within the boundary wall was found to be 16 biswas. The Sub Committee in its report dated 13.05.1999 opined that some additional information be also sought. The relevant portion is quoted below:

> "1. To confirm from the MCD whether the land in question falls within the unauthorized regularized colony of the Krishna Nagar.
> 2. Whether after regularization of the unauthorized colony, DDA has any role for development of the vacant land falls in the said colony.
> 3. After regularization of the unauthroize colony whether DDA deletes that portion of land from their Master Plan/Development Area."

7. The report of the Sub Committee is stated to have been considered by the De-Notification Committee in its meeting held on 04.06.1999 when it was decided to elicit views of the Planning Department of the DDA before recommending any de-notification. The Director (LM) of the DDA informed Commissioner (Planning) of the DDA vide letter dated 10.06.1999 that the physical possession of the land measuring 5 bighas and 2 biswas forming subject matter of the award had not been taken over and at the site there were structures known as Partap Ice Factory. The De-notification Committee was seized of the matter and information was sought whether the land was part of the approved lay out plan.

8. The Secretary (Land) of Govt. of NCT of Delhi sent a reminder to Commissioner (LM) DDA for requisite information on 25.06.1999. In the meantime, the Commissioner (Planning) vide its letter dated 05.07.1999 to Director (LM) of the DDA informed that the land bearing khasra no.42/2 was not part of Safderjung Enclave and was on the fringe/periphery of Krishna Nagar unauthorized regularized colony. It was further stated the land/area stood transferred to MCD and as such no current planning was being undertaken by the Planning Department of the DDA.

9. Secretary (Land) is thereafter stated to have re-commended the de-notification subject to the condition that the land of khasra no.42/2 which had already been utilized by the DDA in construction of road and by-lanes would be given up, land bearing khasra no.48/4 belonging to DDA would be parted with and court proceedings would be withdrawn. However, when the matter was considered by the LG/competent authority on 16.07.1999, a query was raised for ascertaining from MCD whether it required the land for providing the common facilities. The LG also wanted to know the exact land use as per the Zonal Plan. This note records that out of the aspects weighing for de-notification, the first one of a challenge being laid and a stay order being obtained from a civil court was not

tenable while the aforesaid information was required for the second aspect i.e. that the DDA had no use of land because the colony had been handed over to MCD. This resulted in a communication dated 16.08.1999 by the Secretary (Land) to the MCD to which a response was sent on 01.12.1999 by the Commissioner, MCD informing that the site was earmarked for group housing and the site was not required for any common facilities as there was no deficiency in that behalf.

10. In pursuance to the aforesaid developments, the Land and Building Department of Govt. of NCT of Delhi addressed a letter dated 24.02.2000 to the petitioners enquiring as to what project was being proposed by them on the land in case it is de-notified. This was responded to on 07.03.2000 stating that the owners were ready to abide by the requirements of the plan and accordingly use the land for group housing, the earmarked purpose. Thereafter, the matter was again put up to the LG on the earlier de-notification proposal of the Secretary (Land). The LG in terms of his note dated 06.04.2000 found that there were some inconsistencies since the Planning Department of DDA had opined vide its letter dated 05.07.1999 that the land was not part of Safderjung Enclave but was in fringe/periphery of Krishna Nagar unauthorized

regularized colony while Commissioner, MCD vide a DO letter dated 01.12.1999 had opined that the land in question forms part of the lay out plan of Safderjung Enclave and that was the basis for stating that the area was earmarked for group housing. However, no final picture in this behalf emerged and the original records produced show that the notings in this behalf came to an end in December, 2001 with the matter being never placed before the LG with full information to take a decision on the issue of de-notification one way or the other. The civil suit no.82/99 was ultimately dismissed on 18.08.2005. The petitioners moved a representation dated 06.09.2005 to the LG once again raising the issue of the pending representation for de-notification of land under Section 48 of the said Act.

11. It is the case of the petitioners that the respondents irked by the second representation exposing inaction of the administration, instead of passing an order in respect of the plea of de-notification, made an endeavour to take over possession of the land when only paper possession was taken over on 22.02.2006. The petitioners approached this Court by filing the present writ petition under Article 226 of the Constitution of India when the parties were directed to maintain status quo

with regard to the possession in terms of the order dated 10.03.2006.

12. The pleadings were completed but thereafter the petitioners amended the writ petition in the year 2010 in view of certain subsequent facts. The petitioners claim quashing of the notifications along with the plea to de-notify the land. Thereafter, even amended pleadings have been filed.

13. The respondents plead that a decision was taken on the representation of the petitioners under Section 48 of the said Act during the pendency of the petition which was duly communicated by the Deputy Secretary (LA) vide letter dated 20.04.2006 which reads as under:

> "I am directed to refer you representation dated 27.09.2005 on the subject cited above and to inform you that case for de-notification of subject land was considered. It has been observed that physical possession of the said land has been taken over by DDA on 22.02.2006. With this acquisition proceedings stands completed. As per provisions of the Land Acquisition Act, 1894, the acquired land cannot be denotified under Section 48 of the LA Act once the acquisition proceedings are completed. Hence, your request for denotification of the said land under section 48 cannot be considered at this stage."

14. It is the submission of the respondents that since physical possession of the land has been taken over,

the acquired land cannot be de-notified under Section 48 of the said Act.

15. When the matter was taken up for hearing on 09.11.2010, learned senior counsel for the petitioners confined his submissions to a claim that since their application under Section 48 of the said Act was made as far back as 1998, comments were called for, and even De-notification Committee had recommended release of land, the proceedings for de-notification ought not to have been made infructuous by seeking to take possession in the year 2006 without deciding the application of the petitioners.

16. Learned counsel for the respondents, however, strenuously contended that the writ petition had no merit on various grounds as set out in their synopsis. It is their plea that the petitioners are only name-lenders as the writ petition has been filed through an attorney as would be apparent from the affidavit filed in support of the writ petition. Nothing was disclosed as to how this attorney got authority, person by the name of Sh.R.K.Aggarwal who was not related to the petitioners. The counter affidavit filed on behalf of R-2 and R-3, in para 10, specifically raised this plea, but in rejoinder, nothing has been said in this behalf except to file a copy of the special power of attorney. The power of attorney does not appear to be

registered and is executed on 30.04.2004. The special power of attorney in favour of Sh.R.K.Aggarwal is very comprehensive including giving authority to transfer the property, take all legal steps, appoint arbitrator and to sign and file applications for de-notification/release of the land. It also authorizes engagement of pleaders or advocates and to appoint or remove further/general special power of attorneys. In the last para, being para 16, of the power of attorney it is in fact labeled as a General Power of Attorney. The stand of the said respondents thus is that the petitioners have clandestinely sold the land to the attorney or his nominee for consideration and have suppressed the other documents executed as they would show the transfer of land which was prohibited under the Delhi Lands (Restrictions on Transfer) Act, 1972. The allegation is of suppression of the material documents in respect of true nature of transaction.

17. It is the plea of the respondents that having failed in the challenge to the acquisition proceedings in the writ petition, the acquisition proceedings were challenged in a civil suit where interim orders were granted of status quo on 29.05.1979 which was vacated on 22.10.1980. However, in appeal, the interim orders were restored and were to continue

during the pendency of the suit which was finally dismissed on 18.08.2005. Learned counsel emphasized that a preliminary issue was framed about the maintainability of the suit in view of the provisions of the said Act and despite the pronouncements of the Supreme Court, in State of Bihar v. Dhirendra Kumar: AIR 1995 SC 1955, the petitioners continued to prosecute the suit till its dismissal on 18.08.2005 since they were enjoying interim orders. It is during the pendency of the suit that an application was filed on 16.07.1998 seeking de-notification of the land under Section 48 of the said Act. The possession of the land is stated to have been taken on 22.02.2006 on the repeated demands made by the DDA and was simultaneously handed over to the DDA. Demolition was also carried out of the unauthorized constructions raised by the petitioners on 10.03.2006 on which date the petitioners are alleged to have persuaded this Court to pass interim order of status quo by misleading the Court. It is under the garb of this order that the petitioners are alleged to have tried to regain possession resulting in police complaint dated 05.05.2006 being filed by DDA. The possession proceedings have been annexed to the counter affidavit of the DDA. The absence of any notings in the file post 2001 is stated to be on account of the fact

that as the civil suit was still pending in which interim orders granted on 29.05.1979 were enuring for the benefit of the petitioners, the file was not processed further in respect of the application of the petitioners under Section 48 of the said Act. It is only on dismissal of the suit on 18.08.2005 that possession proceedings were taken out on 22.02.2006. Learned counsel sought to draw strength from the observations made by the Division Bench of this Court in Ramjas Foundation & Anr. versus UOI & Ors.; 110 (2004) DLT 10. In that case, a representation was made in 1995 but was rejected in the year 2002 while in the meantime, the possession was taken over during the pendency of the representation. The Division Bench did not interfere and the SLP (Civil) No.7026/2004 directed against that order was dismissed as withdrawn on 21.04.2008. It is, however, admitted that no decision was taken on the application of the petitioners under Section 48 of the said Act, but the plea is that the Government had never de-notified the land and thus the petitioners cannot claim any interest or equity.

18. Insofar as the notings are concerned, learned counsel for the respondents sought to rely upon the observations of the LG on 16.07.1999 when out of the two proposed grounds for release, the LG disagreed

with the first ground i.e. the interim stay and insofar as the second ground was concerned, asked the Department to obtain clarifications from MCD and DDA. Thus, nothing positive in favour of the petitioners was indicated by the LG in the note. Even in the subsequent note of the LG dated 23.03.2000, the file was returned on account of certain contradictions with the remark “please speak”. The clarifications were sought up to 2001 though they were not forthcoming and the file again started moving in the year 2005 on the request of the petitioners. The meeting was convened by the LG which was attended by the officials of the DDA and MCD and finally the LG vide note dated 04.04.2006 approved the view as resolved by the committee on 23.03.2006 and the decision was duly communicated to the petitioners on 20.04.2006. The subsequent representation made through an attorney was also rejected. Learned counsel seeks to emphasize by reference to the judgment in Shanti Sports Club v. UOI and Ors; 2009 (15) SCC 705 that even where one Union Minister had taken a favourable decision which was revoked by the other, the subsequent decision was upheld by observing that the only mode of release of land was by way of notification under Section 48 of the said Act. No such decision had been

taken in the present case. Even on the aspect of release of other lands being made examples, the same were rejected by the Supreme Court.

19. In order to appreciate the aforesaid rival contentions, it is also necessary to record how the file moved in 2005 after the hiatus period from 2001-2005. The first note dated 26.04.2005 suggests that the file appears to have been misplaced and that immediate steps must be taken to send a reminder to the Director (LM) of the DDA to send his comments. Thus, the story of the comments not forthcoming began once again. In the meantime, the representation filed on behalf of the petitioners after dismissal of the suit was also received. A detailed note on 03.11.2005 records the history and the factum of report not being sent by Director (LM) till that date and thus the file has to be placed before the LG. Once again, reminders were sought to be sent to the DDA before putting up the file before the LG but no reply was received and thus it has been recorded that a meeting ought to be called between the Commissioner (Lands), DDA and Commissioner, MCD to clarify its position to be placed before the LG. A meeting was fixed for 06.03.2006 but did not mature due to pre-occupation of the Secretary(Land and Building) and the Additional Commissioner MCD (Land

and Building) in some other matter as noted in the note dated 10.03.2006. It was also noted in the same note that the LG wants to know about the status of the case. The meeting was re-scheduled for 16.03.2006 when the only fact noticed is that though no information was forthcoming from MCD and DDA, the possession of land having been taken, there was no force in the representation of the petitioners for de-notification of the land which was then approved by the LG.

20. The sum and substance thus is that the information sought by the LG was not forthcoming from the MCD and DDA for almost seven years for different reasons, but at the fag end since possession was taken over it was stated that the exercise to obtain information would be a futile one.

21. The question of taking over possession is seriously disputed by the petitioners. Annexure R-2 is the only document annexed to the counter affidavit of DDA on the basis of which it is claimed that possession was taken over on 22.02.2006. There is nothing else in the original records produced in the Court. The possession report shows that at site the respondents went around the wall containing the structure and the vacant land and took over the possession. There is not even a recorded note of opening the gate,

entering into the property or physically taking over possession thereafter. All that is written is that the possession proceedings are thereafter complete and the words used are “actual possession”. The possession report mentions the land area as eight biswas and that there was no resistance to the possession.

22. In the rejoinder affidavit, the petitioners pleaded that the respondent-authority seems to have prepared the report while sitting in their office. There was a generator room, tube well and one dry well of which there is no mention in the possession report. The demarcation report carried out by the officials of the respondents on 05.05.1999 had referred to the existing construction to be shown of 16 biswas while the possession report dated 22.02.2006 mentions it as eight biswas. The persons deputed by the petitioners were stated to be residing in the property and there was an electricity meter of which last reading was recorded on 07.03.2006. The persons occupying the property on behalf of the petitioner being Sh.Dalip Singh and Sh.Ram Bhadur have also filed affidavits about their being at site on 22.02.2006 when no one came to the site. It has been pointed out that the possession report does not bear the signatures of any Panch or independent witness. There is also no

mention of the two gates in the boundary wall for ingress or egress. It is not the case of the respondents that they had sought any police protection at the time of taking over possession while after the alleged date of taking over possession when they wanted to carry out demolition, police protection was sought. The possession report is thus referred to be unbelievable and a fabrication. Most importantly there was no Halka Patwari present and it has not even been indicated as to when the date for taking over possession was fixed and if the DDA informed to come to the site.

23. It is thus pleaded that these records have only been created to plead that the LG need not apply his mind to the application of the petitioners under Section 48 of the said Act.

24. The last aspect which learned counsel for the petitioners seeks to emphasize is that there has been considerable pick and choose on the aspect of release of land under Section 48 of the said Act and pleaded there were two glaring examples of the same. The first one is in the case of Smt.Roshanara Begum in respect of land measuring 9 bighas and 1 biswas situated in Village Lado Sarai, which formed subject matter of dispute in the judgment of the Full Bench of this Court in Roshanara Begum v.Union of India; (1996) 61 DLT 204 which was unsuccessfully

challenged before the Supreme Court in Murari v.Union of India; 1997 (1) SCC 15. Despite this, the land was subsequently released under Section 48 of the said Act. We have noticed this even in WP(C) No.2563-66/2005 decided on 04.03.2010.

25. We had called records of Roshanara Begum's case and it transpires that in terms of the order of the LG dated 18.12.2007 the land was released on a representation of Sh.Sultan Ahmed and Smt. Saira Banu, son and daughter of Late Smt. Roshanara Begum nee Naseem Banu. The area was found to be a part of the Regional Park and not falling in the ridge. The de-notification was subject to the land being maintained as green in consonance with the intent of the Master Plan, no new permanent structure to be built, temporary structures to be raised only with the prior approval of DDA and no claim for compensation towards damages. The existing structures on the site are stated to be a kothi, room, boundary wall and hall.

26. The second case referred is the case of Radha Soami Satsang Beas ('RSSB') in respect of land measuring 21 bighas and 8 biswas situated in Dwarka. The original record of this case shows that the land was purchased by RSSB in April-May, 1999 prior to the notification under Section 4 of the said Act dated 13.12.2000. A declaration under Section 6 was issued

on 7th December, 2001 when RSSB applied for de-notification of their land on the ground that it was required for religious purposes and ought to be exempted. This request was turned down by the then LG on 07.11.2002 after receiving recommendation of the De-notification Committee. The DDA stated before the De-notification Committee that the land was required for construction of planned road for providing connectivity between phases I and II of Dwarka, for construction of flats to meet pending public demand and social and physical infrastructure. The Committee recommended that the RSSB could approach the DDA for allotment of land in institutional area. The challenge raised by RSSB of refusal of de-notification under Section 48 of the said Act in a writ petition was rejected in May, 2005. Despite this, it was found that there were certain public policy dimensions which again need to be re-examined, as per the note of the LG dated 14.05.2008.

27. Basically, the main ground is stated to be large functions held by RSSB which required a large area. The possession of land could not be taken because of sit in by the followers of RSSB. RSSB offered to give up possession of this strip of land in lieu of an equivalent area adjoining their remaining area. It was found that divesting RSSB of the land was not a

workable solution. The objection of DDA that such de-notification would generate a similar demand from other parties was also brushed aside as the land was being used for community purposes in the case. The earlier order of the then LG dated 07.11.2002 was hence superseded when the LG passed the order dated 14.05.2008.

28. On giving our thoughtful consideration to all of the aforesaid aspects, we consider it appropriate to deal with the different aspects separately which arise for adjudication and are germane to the issue.

THE WRIT PETITION BEING FILED THROUGH POWER OF ATTORNEY

29. The writ petition filed by the petitioners is through a Power of Attorney – person by the name of Sh.R.K.Aggarwal. The writ petition was not supported by the copy of Power of Attorney but when the objection was raised by the respondents in their counter affidavit, a copy of the power of attorney was filed with the rejoinder. It is pertinent to note that para 10 of the counter affidavit filed by R-2 and R-3 only raises the plea that the petitioners had not filed any documents on record to show their authority. It is in response thereto that a copy of Power of Attorney was filed by the petitioners.

30. No doubt ideally a copy of the Power of Attorney ought to have accompanied the petition, but then once an objection was raised, the same has been placed on record. The plea of the learned counsel for the respondents that the petitioners are only name lenders did not form the basis of the objection, but the objection was about the absence of the Power of Attorney which has since been filed.

31. We may also notice that nothing prevents a competent authority before passing any order under Section 48 of the said Act to satisfy itself about the current title of the property and whether it has been transferred contrary to the provisions of the Delhi Lands (Restrictions on Transfer) Act, 1972. No doubt the Power of Attorney gives extensive powers but from that alone one cannot derive a presumption in favour of the property having been transferred. On the petitioners being called upon to explain their stand in this behalf, a conclusion regarding title can always be a factor to be considered in an application under Section 48 of the said Act. Thus, the factum of the writ petition having been filed through a power of attorney by itself cannot shut out the petitioners from making a grievance about the representation made under Section 48 of the said Act and the manner of its disposal.

32. We make it clear that it is open to the competent authority to first satisfy itself that the petitioners continue to be the owner of the property in question and that it is not a proxy litigation by a power of attorney holder who had acquired interest in the property.

INSTITUTION OF A CIVIL SUIT BY THE PETITIONERS

33. It is no doubt true that the challenge laid to the acquisition proceedings by the petitioners through filing of a civil writ petition No.641/1978 did not succeed as the same was withdrawn on 29.08.1978 as the writ petition was belated. Subsequently, award bearing no.38/78-79 was passed on 23.01.1979. However, the petitioners filed Civil Writ Petition No.82/1979 before the Sub Judge, Delhi and were successful in getting an interim relief by the appellate court. It is during the pendency of this suit that a representation dated 16.07.1998 was filed by the petitioners making a request to the competent authority/LG for de-notification of the land under Section 48 of the said Act.

34. We are unable to accept the contention of learned counsel for the respondents that the petitioners themselves should have *suo motu* withdrawn the civil suit in view of the judgment of the Supreme Court in State of Bihar v. Dhirendra Kumar's

case (supra). The respondents were also fully aware of the judgment and nothing prevented them from bringing that judgment to the notice of the Court seeking dismissal of the suit on that account. Both the parties kept silent about that aspect and the application filed by the petitioners under Section 48 of the said Act continued to be processed. The respondents thus cannot absolve themselves of the responsibility in this behalf or for the delay in disposal of the suit which came to be dismissed only on 18.08.2005 when interim orders stood vacated.

THE MANNER OF PROCESSING OF THE APPLICATION UNDER SECTION 48 OF THE SAID ACT

35. We have already noticed above that the application for release of the land under Section 48 of the said Act through a representation dated 16.07.1998 was filed before the LG. The application was processed and comments were called from the various departments including the site position. The case of the petitioners was also put up before the De-notification Committee in its meeting held on 27.01.1999 when it was resolved to inspect the land. The land was duly inspected by the Sub Committee on 05.05.1999 when it was found that a portion of the khasra no.42/2 (which was in issue) fell outside the boundary wall and formed a part of the service lane

while the remaining portion was within the four walls of the petitioners and under possession of the petitioners. It was also noticed that the boundary wall included land of khasra no.48/4 of which possession was reported to be taken over but continued to be in unauthorized occupation. It is in view thereof that the recommendation was made for de-notification, but subject to the petitioners giving up the land in respect of khasra no.48/4 and not claiming any damages in respect of the land already utilized out of khasra no.42/2.

36. However, there appeared to be some confusion about the location of the land and whether it fell within the jurisdiction of the DDA or MCD. The DDA was of the view that the land did not form a part of Safderjung Enclave and was on the fringe/periphery of Krishna Nagar unauthorized regularized colony. No planning was being undertaken by the DDA and opined that the matter really pertained to MCD. This is clear from the letter of the DDA dated 05.07.1999 which was issued in concurrence with Commissioner-Planning, DDA. The MCD also took the stand that it did not require the land in question for any community services of Krishna Nagar unauthorized regularized colony on a query being posed from the office of the LG. It was only in the conspectus of all these facts

that the Secretary (Land) of Govt. of NCT of Delhi thereafter recommended de-notification of the land falling in khasra no.42/2 subject to terms and conditions. When the matter reached for final approval of the LG/competent authority, a query was posed on 16.07.1999 about the stand of the MCD, which was clarified as aforesaid and the MCD informed that the site was earmarked for Group Housing. The petitioners were also asked to inform the proposed user of the land in terms of the letter dated 24.02.2000 and they stated that the land would be used for the earmarked purpose. It is with all this material that the matter was once again placed before the LG who found some inconsistencies between the stand of the Planning Department of the DDA and of the MCD. It is in view thereof that note was penned down by the LG on 06.04.2000 seeking a clarification as to whether the land in question formed a part of the lay out plan of Safderjung Enclave or not. Unfortunately, despite repeated reminders, DDA did not answer this query and the file was not even processed after December, 2001. None on the part of the respondents cared to seek appropriate information to be placed before the LG as per the directions of the LG. The explanation of the aforesaid, as given by learned counsel for the respondents, is that this may

have happened because of the pendency of the civil suit where a stay was operating. This plea is only to be stated to be rejected for the reason that everyone was aware of the pendency of the civil suit and the application of the petitioners being processed. It is the non-adherence of the DDA to the demand from the LG's Office in respect of explanation regarding the aforesaid aspect which resulted in non-processing of the file. Once the suit was dismissed, the petitioners once again represented about the pendency of the representation.

37. It is no doubt true that the petitioners did not approach any judicial forum against non disposal of their representation under Section 48 of the said Act during the pendency of the suit. It can, however, be not lost sight of the fact that the representation of the petitioners under Section 48 of the said Act was, in fact, being examined by the respondents and queries were even posed to the petitioners. The petitioners can hardly expect in such a situation that any action would be taken without finally deciding their representation under Section 48 of the said Act.

38. The records show that queries of the LG remained unanswered even in the year 2005. All that happened was that it was put up to the LG that the possession had been taken over of the site on

22.02.2006 and thus there could be no question of release of the land under Section 48 of the said Act. That is the sole reason for rejection of the application of the petitioners under Section 48 of the said Act and not on the merits of the claim laid by the petitioners. The post dismissal of suit period also saw once again queries being raised from the DDA and reminders being sent, but to no avail. A meeting was also directed to be held between Commissioner (Lands), DDA and Commissioner, MCD to clarify the position to be placed before the LG which did not fructify and on the anvil of the second date fixed, the possession was stated not to have been taken over making the discussion infructuous.

39. We have already recorded in para 15 aforesaid that the learned senior counsel for the petitioners confined his submission to the claim of non consideration of the application of the petitioners under Section 48 of the said Act made as far back as in the year 1998 for which a recommendation was made by the concerned authorities of course subject to the final approval of the competent authority/LG. We find force in the contention of the learned counsel for the parties that there has been gross negligence on the part of the respondents in dealing with the application of the petitioners under Section 48 of the

said Act by keeping it pending with no movement of the file for a number of years. The file initially moved, comments were called from all the concerned departments, clarifications and re-clarifications sought and it is in pursuance thereto that the recommendation was made to the LG for de-notification of the land subject to certain terms and conditions. The LG only wanted clarification on a particular aspect which the DDA failed to respond despite repeated reminders. Instead of obtaining clarification, the file was put in a cold storage and on a dismissal of the suit once again the story of certain clarifications form DDA started but the same was sought to be defeated by claiming possession having been taken over. It is not a case where the land owner having lost throughout has filed an application under Section 48 of the said Act just prior to the possession being taken over to defeat the effect of the loss in the previous litigation. The petitioners were enjoying interim stay in the civil suit and yet chose to make a representation for release of the land under Section 48 of the said Act which was acted upon. The respondents could have easily dealt with the file within a reasonable period of time and the LG would have arrived at a decision but for the file being put in a cold storage post 2001. There is thus no final

decision of the LG on the merits of the application of the petitioners.

40. A further question thus which would have to be examined is as to whether the physical possession was actually taken over from the petitioners making the application under Section 48 of the said Act infructuous and whether such an action is sustainable in law.

POSSESSION PROCEEDINGS

41. The possession proceedings in the present case are of vital importance.

42. We may note that the possession proceedings are only of one page which have been annexed as Annexure R-2 to the counter affidavit of DDA. We had called for the records and it is not in dispute that there are no proceedings other than that annexure. There is some action of demolition subsequently taken but that is not simultaneous to the possession being taken over. The records show that there are no communications really of the DDA in behalf of the action to be taken to take over possession of the land in question at that time. On the other hand, the communications to the DDA had again started seeking clarification as sought by the LG which remained unanswered. If the possession report annexure R-2 is perused, it would show that the representatives of the

respondents went around the wall of the property in question containing the structure and vacant land and claimed to have taken over possession hence. As to how taking a circle around the wall would amount to taking over possession is a moot point. There is no recording of any gate being opened to enter the property or to take over physical possession. All that is written is that the possession proceedings are complete.

43. We find merit in the plea of the petitioners that the possession proceedings give no confidence whatsoever and it appears that the officers merely went around the property and came back by making a paper endorsement of having taken over possession. No proper description is given as to what existed at site and affidavits have been filed on behalf of the representatives of the petitioners who stay at site. The possession report bears no signatures of any independent witness or Panch and most importantly there is not even the presence of Halka Patwari. There are no records to show as to when the date for taking over possession was fixed and when DDA was informed to be present at site. In such possession proceedings, the Halka Patwari should have been there at the site. There is also strength in the submissions of the petitioners that the respondents

claimed to have sought police protection when the respondents subsequently fixed a date to carry out demolition of structure but never sought police protection at the time of taking over possession of the property in question. These aspects have not to be read in isolation but collectively which would show that physical possession was actually never taken over and they were only paper proceedings. Other than the possession proceedings filed with the counter affidavit, there is no other record to show the intent of the respondents to take over possession of the property in question.

44. We have examined the issue of taking over possession by examining various pronouncements of the Supreme Court in WP(C) No.1907/1986 Auto Grit and Ors. V. UOI & Ors., decided on 03.02.2010 and subsequently in WP(C) No.2563-66/2005 M/s Budh Singh Gulab Singh and Ors. V. UOI and Ors. decided on 04.03.2010. The Supreme Court has emphasized that whether possession has been taken over or not would depend on the facts of each case. We had observed as under in Auto Grit and Ors. V. UOI & Ors.'s case (supra) as under:

> "We are conscious of the fact that there are various judgments relating to the aspect of handing over possession and it has been emphasized by the Supreme Court that whether possession has been taken over or not would depend on the

facts of each case. This position emerges from the judgment of the Supreme Court in Balwant Narayan Bhagde v. M.D.Bhagwat and Ors.; (1976) 1 SCC 700, National Thermal Power Corporation Ltd.v. Mahesh Dutta and Ors.; 2009 (9) SCALE 591 and Sita Ram Bhandar Society, New Delhi v. Lt. Governor, Govt. of NCT of Delhi & Ors.; 2009 (12) SCALE 550.

Learned counsel for the respondents have emphasized that the recording of panchnama can itself constitute evidence of the fact of possession having been taken over and land has vested absolutely in the Government as per Sita Ram Bhandar Society, New Delhi v. Lt. Governor, Govt. of NCT of Delhi & Ors's case (supra).

Learned senior counsel for the petitioners on the other hand has emphasized that possession merely on paper would not be enough and how such a possession may be taken would depend on the nature of the land in view of observations of the Supreme Court in National Thermal Power Corporation Ltd.v. Mahesh Dutta and Ors.'s case (supra). It was observed that in the case of land lying fallow and there being no crop on it at material times, the act of the Tehsildar in going to the spot and inspecting the land for the purpose of determining what part was waste and arable and should be taken possession of and determining its extent was sufficient to constitute taking possession.

On the other hand, it was observed that the question whether physical possession has been taken in compliance of provisions of Section 17 of the said Act or not would depend on the facts and circumstances of each case. It was further observed that possession was either correct or incorrect and it cannot be partially correct or partially incorrect. In Balwant Narayan Bhagde v. M.D.Bhagwat and Ors's case (supra), it was observed that when proceedings under the said Act for acquisition of land are initiated, all interests are wiped out

> and actual possession of land becomes necessary for its use for public purpose for which it had been acquired and thus taking over possession under the said Act cannot be symbolic in the sense as generally understood in civil law. **It could not be possession merely on paper and what is required under the Act is taking of actual possession on the spot.**"
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> (emphasis supplied)

45. In the facts of the present case, we find that obviously no physical possession of the land was taken over, but a formality was completed only on the file. The representatives of the respondents in the absence of any Halka Patwari just went around the wall and completed a noting in the file and this cannot be categorized as sufficient to constitute taking over possession in view of what we have referred to aforesaid.

46. We thus come to the conclusion that no physical possession was taken over of the site of the petitioners and it is only when the demolition action was threatened at the site that the petitioners approached this Court and status quo order was passed.

47. In view of the aforesaid findings, we are not inclined to go into the effect of taking over possession pending consideration of the application of the petitioners under Section 48 of the said Act in the given facts of the case. Thus the application under

Section 48 of the said Act can be decided on merits and ought not to have been rejected only on the ground of possession having been taken over which was only a ruse to prevent proper consideration of the application of the petitioners by the LG as per information sought from the office of the LG.

PLEA OF DISCRIMINATION

48. Lastly we are concerned with the plea of discrimination as urged by the learned counsel for the petitioners.

49. We have noticed two examples given by learned counsel for the petitioners of such discrimination in para 24 aforesaid and have also noticed as to how those cases were dealt with in para 25 to 27 aforesaid. All we can say is that we are surprised that after having spent valuable judicial time in seeking authoritative pronouncements in Roshanara Begum v. Union of India and Ors; AIR 1996 Delhi 206 which was sustained by the Supreme Court in Murari and Ors v. Union of India & Ors.; 1997 (1) SCC 15, the land was released from acquisition even though it was forming a part of the Regional Park. The effect was that the existing structure of a kothi, room, boundary wall and hall would continue to stand in an area earmarked under the Master Plan and the Zonal Plan for a Regional Park. Similarly, in RSSB' case, there was a negative recommendation by the De-notification Committee

unlike the present case and the LG had even turned down the request for de-notification on 07.11.2002. The land was required as per the DDA for construction of planned road and for providing connectivity between Dwarka Phase I and II. This matter was re-examined on the spacious plea that the ground reality required a different view to be taken as taking over possession was creating difficulty and large tracts of land were required by RSSB for holding religious and social functions. If such a plea was to be accepted then any land owner who uses force to retain possession of the land would stand to gain by such illegal conduct as against the land owner who follows the law of the land. Even the objection of the DDA that such de-notification would generate similar demands from other parties was brushed aside by the LG while passing the order dated 14.05.2008 superseding the earlier order of the then LG dated 07.11.2002.

50. In the present case, the then LG had found that the pendency of the civil proceedings and the stay should not be a factor which would weigh in de-notification but sought clarification in respect of the other aspect. On the other hand, in RSSB's case, forget any judicial order which was absent, the sit in or squatting by members of RSSB persuaded the LG to exercise jurisdiction to release the land.

51. We feel that such pick and choose policy naturally gives rise to resentment and a feeling in public quarters that the social standing of the owner/organization may help in release of the land. The de-notification policy should be strictly adhered to. We say no more as the petitioners are succeeding in the writ petition in any case.

CONCLUSION

52. We are of the categorical view that the application filed by the petitioners under section 48 of the said Act as far back as on 16.07.1998 read with the last reminder dated 06.09.2005 are required to be examined by the LG on the merits and the impugned decision communicated to the petitioners vide letter dated 20.04.2006 in terms whereof the representation of the petitioners has been rejected on the plea of possession having been taken over cannot be sustained and is quashed.

53. We have already observed that it is open to the respondents to verify at the threshold about the current title of the petitioners to find out that they continue to be owners and have not sold the property on a power of attorney basis. A fresh decision should be taken preferably within three months of the communication of the order and till then a status quo order as directed by this Court would continue to operate. In case of any adverse decision, the status

quo order would continue to operate for a period of 15 days from the date of receipt of the decision by the petitioners, a copy of which should also be served on the counsel for the petitioners.

54. The writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

December 24, 2010 VALMIKI J.MEHTA, J.
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