

**Krishan Gopal Sharma Vs. Delhi Development Authority and ors.**

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**Court :** Delhi

**Decided On :** Aug-26-2004

**Reported in :** 116(2005)DLT387

**Judge :** Pradeep Nandrajog, J.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 4, 6, 8, 9 and 10; [Constitution of India](#) - Article 226

**Appeal No. :** W.P. (C) No. 6328 of 2003

**Appellant :** Krishan Gopal Sharma

**Respondent :** Delhi Development Authority and ors.

**Advocate for Def. :** Sachin Chopra, Adv. for the Respondent Nos. 1 and 2 and ; J.P. Singh, Adv. for the Respondent Nos. 3 to

**Advocate for Pet/Ap. :** Lokesh Kumar, Adv

**Judgement :**

**Pradeep Nandrajog, J.**

1. Petitioner claims to be the co-owner of 4 bids was of land comprised in Khasra No. 1619/893 in the Revenue Estate of Village Madipur, petitioner has 1/3rd share in the said land. Remaining 2/3rd share belongs to sons of late Sh. Rampath and

late Sh. Ganpatrai. In other words, share of the petitioner in the land would be 1.33 biswa or say about 66 sq. yards.

2. Vide Notification dated 13.11.1959, being No. F-15(III)/59-LSJ 2632 0 bigha 18 bids was of land was notified under Section 4 of [Land Acquisition Act, 1894](#) for acquisition in Village Madipur. Declaration under Section 6, vide Notification No. F-4 (30)/63-L and H was issued on 10.6.1963. After issuing notices under Sections 9 and 10 of the Land Acquisition Act 1894, the Land Acquisition Collector published an award No. 1691 dated 23.3.1964 acquiring most of the notified land. The land in question belonging to the petitioner and the other co-owners was not acquired under the award. Following was observed in the award:

'field No. 1619/893 total measuring 0 bigha 4 bids was is a well for drinking water and is in the middle of the built up area which is not being acquired under this award. So field No. 1619/893 which is a well will be acquired with the built up area, at a later stage.'

3. Some other land notified under Section 6 in the village not acquired earlier was acquired under a supplementary award No. 78/83-84 dated 16.12.1983. Under this award further 30 bighas 14 bids was of land was acquired. Land in question was not acquired.

4. It is stated in the petition that on 26.8.2003, petitioner visited the land and noticed that respondent No. 3 is constructing on plot No. 133, block No. A4, Paschim Vihar measuring, 70 metres which is a part of Khasra No. 1619/ 893, Petitioner further states that he learnt that the DDA auctioned the plot for Rs. 11 lacs. He further learnt that the land comprised in Khasra No. 1619/893 was divided into 4 plots being 130 to 133 each measuring 70 metres and had been sold by the DDA. He further learnt that respondent No. 4 had purchased plot No. 131. In the petition it is stated that petitioner is not aware of the purchasers of plot Nos. 130 and 132.

5. During the pendency of the writ petition, all the purchasers of the 4 plots were imp leaded as respondents.

6. The petitioner states that he made numerous visits to have the matter resolved with the officials of the DDA. Nothing fruitful transpired. Present petition was filed praying as under:

(a) declare that the respondent Delhi Development Authority had no authority in law to conduct auction sale in respect of land bearing Khasra No. 1629/893, measuring 04 bids was situated in Village Madipur, New Delhi (now Plot No. 133, Block A4, Paschim Vihar, New Delhi), as marked in the site plan as ABCD, and had no right, title or interest in the land and had encroached upon the land on the date of auction sale/ allotment of the said land by the DDA; and further

(b) declare that the auction sale of plot Nos. 130 to 133, Block A4, Paschim Vihar, New Delhi, comprising of Khasra No. 1619/893, measuring 04 bids was situated in Village Madipur, Delhi, in favor of respondent Nos. 3 and 4 and two others is illegal and contrary to law. AND.

(c) Issue writ, order or direction in the nature of mandamus directing the respondents 1 and 2 to show the authority in law vested in them, for conducting auction sale in respect of land bearing Khasra No. 1619/893, measuring, 04 bids was situated in Village Madipur, New Delhi (now Plot Nos. 130 to 133, Block A4, Paschim Vihar, New Delhi); AND

(d) Mandamus directing the Delhi Development Authority, to disclose the name of other two allottees /auction purchasers, in whose favor the plot Nos. 130 to 132 have been allotted in auction sale; AND

(e) Issue writ order, direction in the nature of certiorari to cancel /set aside the auction of sale of plot Nos. 130 to 133, Block A4, Paschim Vihar, New Delhi; AND

(f) Issue writ, order, direction in the nature of mandamus directing the respondent Delhi Development Authority to get the land bearing Khasra No. 1619/893, measuring 04 Biswas, situated in Village Madipur, New Delhi (now Plot Nos. 130 to 133, Block A4, Paschim Vihar, New Delhi) vacated and remove the encroachment thereon and handover peaceful physical possession to the petitioner :

(g) Issue writ, order, direction in the nature of mandamus directing the respondent Delhi Development Authority to pay reasonable compensation to the petitioner for illegally occupying the land in question and auctioning the same in auction sale to the respondents-auction purchaser Nos. 3 and 4 and two others, without any authority of law.'

7. Counter, affidavit filed by the private respondents is that they are bona purchasers under DDA. thereforee, their possession would not be disturbed.

8. As far as DDA is concerned, defense taken in the counter affidavit is that after the two awards were passed, possession at site was handed over. Possession of land in question was handed over by the Land Acquisition Collector after the supplementary award was published on 16.12.1983. Development was carried out by DDA. All these years petitioner never came forward to lay any claim. It is stated that the site in question was illegally encroached upon by Jhuggi dwellers and this seems to be the reason why the land was never acquired. It is stated that the Jhuggi dwellers were relocated by DDA when the land was got freed from unauthorised occupation.

9. In the counter affidavit, it has not been disputed that the 4 bids was of land was never acquired.

10. In the rejoinder affidavit, petitioner has not denied the averments made in para 5 of sub-para II of the preliminary objections, in which para, DDA has stated that land was under heavy encroachment.

11. Three things stand out which must be noted at the very first instance:

(a) 4 bids was of land comprised in Khasra No. 1619/893, Village Madipur, New Delhi was never acquired, petitioner's share in the land is only 1/3rd i.e. approximately 68 sq. yards

(b) DDA took possession of the land somewhere in the year 1983 and till the year 2003 petitioner never showed himself at the site or anywhere in the office of the DDA.

(c) Award shows that the site was not acquired because of being built upon. Assertion of the DDA that it had relocated Jhuggi dwellers occupying the site has not been controverted.

12. If one were to go by the law of limitation, petitioner's claim for possession against the DDA would fail.

13. A very large chunk of land was acquired. Petitioner and his co-owners owned only 200 sq. yards of land from out of over 2600 bighas i.e. 26,00,000 sq. yards of land which was acquired. Possibility of any one thinking that in this huge track of land the 200 sq. yards was included cannot be ruled out. It is not a case where DDA took possession of the land in spite of prior information that it was an unacquired land.

14. Learned Counsel for the petitioner contends that there were no encroachments by any Jhuggi dwellers on the land. He seeks to place reliance on the revenue records which does not note existence of any Jhuggi on the land. However, the petitioner himself places reliance on the awards which show that the land in question measuring 4 bids was not acquired due to being built upon. It is obvious that the revenue entries are false or in any case do not correctly reflect the position at site. According to the petitioner himself, land was stated in the awards as not acquired due to being built upon.

15. Obviously, petitioner was having no concern with the structures on the land for if he was residing therein or he had constructed the structures and had let them out to tenants, when DDA took possession at site and removed the structures, the petitioner would have been on the scene.

16. The statements in the award, DDA taking possession of the site and removing the encroachments, petitioner being nowhere in the scene, all lead to one conclusion that the petitioner had as good as abandoned the land as he probably thought that it would be futile for the petitioner to repossess the same from the unauthorised occupants. It further leads to the conclusion that it is the DDA which has got encroachments removed. This Court has no reason to disbelieve the stand of the DDA that it relocated the Jhuggi dwellers.

17. Besides the entire area was developed by DDA. When development of an area takes place, large land come under parks, public roads, public utilities etc. Merely, because the land in question came under plots would not entitle the petitioner to any extra benefit. Lest it be forgotten., municipal agencies are entitled to levy betterment charges qua lands and building if their value/utility is enhanced due to development work carried out by the municipal agencies.

18. All the factors afore-noted, go against the petitioner. However, it cannot be lost site of that the petitioner was the co-owner of the land.

19. Though delay by itself would have been fatal to the petitioner, to in a somewhat similar circumstance, a Division Bench of this Court in the judgment : 109(2004)DLT889 , Shiv Charan v. Union of India, to do complete justice to the parties directed that compensation should be paid.

20. Said case related to a agriculturist whose unacquired land was taken possession by the National Thermal Power Station. He made a claim to the land after over 13 years. Holding that the land could not be directed to be handed over to the petitioner, the Division Bench was of the opinion that to do complete justice, compensation as per the provisions of the [Land Acquisition Act, 1894](#) be paid form the date the said petitioner approached the Court till amount is paid. Land Acquisition Collector was directed to assess the compensation and pay the amount of compensation to said writ petitioner. It was held that the compensation to be paid would be at the prevailing price when the award were made in the adjoining land.

21. At best, present petitioner would be entitled to a similar relief. Since the land is only 200 sq. yards, i.e. 4 bids was and only one of the three co-owners have made claim to compensation, it would be futile to make a reference to the Land Acquisition Collector.

22. The two awards under which land in Village Madipur was acquired have been filed by the petitioner. Compensation assessed for the land as per the award is Rs. 5,200/- per bigha. Adding 15% solarium as in the year 1983, compensation payable for 1 bigha of land would be Rs. 5,980/- say Rs. 6,000/-. Adding 6%

interest from the date of Section 4 notification till the year 1983, compensation payable for 1 bigha of land would be Rs. 14,260/- Compensation payable for 4 bids was of land would be Rs. 2,852/-. Petitioner share in 4 bids was of land is 1/3rd. His share of compensation would be Rs. 950/-.

23. DDA had taken possession of an encroached site. DDA had relocated the illegal encroachment. DDA would be entitled to adequate reduction. All this would render the claim of the petitioner virtually nothing.

24. Considering the facts as fore-noted, I directed DDA to pay to the petitioner a sum of Rs. 5,000/- in full and final satisfaction of all the claims of the petitioner qua his 1/3rd share in the land. DDA would be advised to offer similar sum to the other co-owners, proportionate to their share.

25. Petitioner claims alternative plot. None can be granted since only 66 sq. yards of land being undeveloped, owned by the petitioner was taken possession of.

26. Writ petition is disposed of with the direction aforesaid.

27. No costs.

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