

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (C) no. 1426/2001

Reserved on: 18th August, 2009

Pronounced on: 27th August, 2009.

Mrs. MADHULIKA SRIVASTAVA & ANR. Petitioners

! Through :Mr.Jayant Bhushan, Sr.Advocate with
Mr.S.K.Rout and Mr.M.K. Pradhan and
Mr.P. Verma, Advocates for the petitioner

VERSUS

\$ UNION OF INDIA & ORS Respondents

^ Through Mr.Sanjay Poddar, Advocate for Respondent/LAC.
Ms.Shobhana Takiar, Advocate for Respondent/DDA.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers may be allowed
to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the
Digest? Yes.

V.K.Jain, J.

This is a Petition seeking quashing of Award No.6-B/Suppl./81-82, whereby land of the Petitioners, measuring 1bigha and 4 biswas, comprised in Khasra No.288 Min. of Village Jasola, was acquired.

2. It has been alleged in the Petition that the Petitioners purchased land in question from Ram Prasad, Mahesh Chand, Mehar Chand, Sat Pal and Satvir vide Registered Sale Deed, on the basis of a 'No Objection Certificate' issued by Additional District Magistrate (LA) Delhi. It was stated in No Objection Certificate that Notification No.F-4(9)64/L&H dated 7.12.1966 issued under Section 6 of Land Acquisition Act, had lapsed. The Notification under Section 4 of the Act, in respect of land in question was issued on 6.4.1964 followed by the notification under Section 6 of the Act on 7.12.1966. It has been claimed in the Petition that since notifications under Section 4 and 6 had lapsed, it was not within the power of the respondents to acquire land in question and the award whereby his land was acquired is against the provisions of Section 11A of Land Acquisition Act, which provides a limitation for making the award. It has also been pleaded that the award is null, void and illegal in view of the

admission of the Respondents that the notification under Sections 4 and 6 had already lapsed.

3. In its counter affidavit respondent DDA has stated that Hari Ram and Ram Prasad, owners of land in question, filed Civil Writ Petition No. 812 of 1984, challenging acquisition of various pieces of land including the land in question. Vide an interim order dated 15th March, 1984, this court restrained the respondents from making award. In WP (C) No. 4677 of 1985, titled as M.C. Mehta v. Union of India and Ors., the Hon'ble Supreme Court was concerned with the construction of sewage treatment plants in various colonies of Delhi. Various stay orders passed in respect of land in village Jasola, which was required for construction of Okhla Sewage Treatment Plant were brought to the notice of Hon'ble Supreme Court. DDA, with the permission of Hon'ble Supreme Court, published an advertisement, requiring the petitioners, in the petitions, in which the stay orders pertaining to land required for construction of Okhla Sewage Treatment Plant were passed, to appear before the Hon'ble Supreme Court. Out of large tracts of land subject matter of CWP 812 of 1984, only land measuring 2 bighas and 14 biswa, in khasra No. 158 of village Jasola, was subject matter of the application of DDA before the Hon'ble Supreme Court. Khasra No. as well as area of the land required in

village Jasola, for construction of Okhla Sewage Treatment Plant was specifically mentioned in the notice. The petition were transferred by the Hon'ble Supreme Court to itself and the stay orders granted by the High Court were vacated, and Delhi Administration was directed to take over possession of land and handover the same to Delhi Water Supply and Sewage Disposal Undertaking. The Hon'ble Supreme Court made it clear that possession of only those khasra number was to be taken which were mentioned in public notice. Consequently, stay granted by this court continued to operate in respect of remaining land subject matter of WP(C) No. 812 of 1984. WP (C) No. 812 of 1984 was decided by the Hon'ble Supreme Court on 01.11.1996. Since there was stay operating till 01.11.1996, the award having been made on 31.10.1998 was well within the statutory period.

4. It has also been alleged in the counter affidavit that No Objection Certificate relied upon by the petitioner does not amount to requisite certificate under the provisions of Delhi Lands (Restrictions on Transfer) Act, 1972, the Rules framed under the Act prescribe a format for this purpose, and Competent Authority has not issued any No Objection Certificate for registration of Sale Deed in favour of the petitioner. It has also been stated in the counter affidavit that the sale deed executed in favour of the

petitioner contains false averments to the effect that the land had not been notified under Section 4 or 6 of Land Acquisition Act and the possession of the land had been handed over to the petitioner.

5. A perusal of the writ petition would show that the acquisition has been challenged only on the grounds that (i) the award was not made within the period of limitation prescribed in Section 11A of Land Acquisition (Amendment) Act, 1984 and (ii) 'No Objection Certificate' was issued by the office of Additional District Magistrate (LA) on 10.10.1997, stating therein that notification under Section 6 of Land Acquisition Act had lapsed.

6. The first ground was not pressed before us during arguments in view of the decision dated 11.3.2008 in WP (C) No. 1830 of 1999; Gopi Chand and Ors v. Union of India, whereby this court held that in CWP No. 4677/85; M.C. Mehta and Ors. v. Union of India, the Hon'ble Supreme Court had vacated the stay orders only in respect of those pieces of land which were required for construction of Okhla Sewage Treatment Plant. The same view was taken in W.P.(C) 13618-22/04, decided on 20.10.2008. Since, admittedly, the land subject matter of this petition was not included in the land required for construction of Okhla Sewage Treatment Plant, and the Writ Petition in which stay was granted by this court in respect of land in question was ultimately

dismissed only on 1.11.96, the award made on 31.10.1998 was will within the period prescribed for this purpose.

7. Coming to the second ground, though the case set up in the Writ Petition is that a 'No Objection Certificate' was issued by Additional District Magistrate (LA) on 10.10.97, stating therein that the notification issued under Section 6 of Land Acquisition Act had lapsed and therefore the acquisition is liable to be quashed, the arguments advanced before us at the time of hearing was that the documents dated 10.10.97 was, in fact, a Status Report in respect of land in question and since this Status Report contained a statement to the effect that the notification issued under Section 6 of Land Acquisition Act had lapsed, and the petitioner had relied upon the representation made in the status report, by purchasing land in question, the respondents are now estopped from claiming that the declaration under Section 6 had not lapsed and therefore the acquisition is liable to be quashed on account of lapse of the declaration issued under Sec. 6 of the Act. The submission before us was that but for the representation made in the status report dated 10.10.97, to the effect that the declaration under Section 6 of the Act had lapsed, the petitioners would not have purchased the land in question and, in fact, would have purchased some other land utilising the money which they spent on the purchase of land

in question. Per contra, the learned counsel for the respondents contended that the plea of estoppel having not been set out in the petition, is not available to the petitioners. The contention is that unless pleaded, the plea of estoppel cannot be set up during arguments. According to learned counsel for the respondents, the plea of stoppel has been set up during arguments only when the petitioner found, on production of record relating to issue of documents dated 10.10.97, that this document was not issued with the approval of Additional District Magistrate (LA) who is the competent authority under Delhi Lands (Restrictions on Transfer) Act, 1972.

8. It would be appropriate, at this stage, to note that during the course of hearing of this case on February 19, 2004, it was urged on behalf of the petitioner that they had purchased the land after verifying that it was not the subject matter of acquisition and CERTIFICATE dated 10.10.97 has also been issued by Tehsildar (notification) from the office of Additional District Magistrate (LA) certifying that notification under Section 4 issued on 7.12.1967 had since lapsed. The learned counsel representing DDA at that time contended that Tehsildar issuing the certificate was not competent to issue such a No Objection Certificate under Delhi Lands (Restrictions on Transfer) Act, 1972 and the said

notification under Section 4 had been, in fact, not lapsed. This court thereupon directed the Tehsildar to appear in person along with relevant record. The record was ultimately produced before us at commencement of hearing and it transpired from the perusal of original record that on 9th April, 1997, Tehsildar (HQ) had passed the following order:

“the report of the L.A. and revenue staff is in detail. Issue N.O.C.”

Thus, no approval from the Additional District Magistrate (LA), who is the Competent Authority under Delhi Lands (Restrictions on Transfer) Act, 1972, was obtained before issuing the documents dated 10th October, 1997 and even the Tehsildar had referred to this document as ‘No Objection Certificate’. The points sought to be made by learned counsel for the respondents was that when the petitioner found, on production of record in the court, that in fact document dated 10.10.97 had been issued by Tehsildar without obtaining approval of Additional District Magistrate (LA), the plea of stoppage was thereafter set up post-lunch during arguments, without its having been pleaded in the writ petition.

9. Before we examine the plea of estoppel, we deem it appropriate to consider the decisions of Supreme Court in *Meera Sahni v. Lieutenant Governor of Delhi & Ors.*

A perusal of the decision would show that in that case also the petitioners had relied upon documents identical to the documents relied upon by the petitioners in this case. Document identical to document dated 10th Oct., 1997 in this case was set up in that case as 'permission' granted u/s 5 of Delhi Lands (Restriction on Transfer) Act, 1972. In para 31 of the judgment, the Hon'ble Supreme Court observed as under:

"What was placed by the appellants before us in support of their claim were two non-statutory formats. One of the formats was under the caption "Statement to be furnished to the Registering Officer for ensuring non-contravention of Section 8 of the Delhi Lands (Restrictions on Transfer) Act, 1972" and the other format, allegedly an order to be passed by the Tahsildar or an Additional District Magistrate. In order to properly appreciate, one of the letters/permissions is extracted hereinbelow:

*"OFFICE OF THE ADDITIONAL DISTRICT
MAGISTRATE (LAND ACQUISITION), DELHI*

No. 4173 (The Notification) Dated 27-5-1992

To,

The Sub-Registrar, Sub-District No.III

Delhi/New Delhi.

Warning

The report is being sent from acquisition point of view and this office has got no responsibility for any defective title of the land/ownership, etc. in the (sic).

- (i) *As per records available in the office the property/land, the details of which are given in the statement, has been acquired under the provisions of the Land Acquisition Act, 1894.*

OR

- (ii) *The property/land, the details of which are given in the statement stands notified under Section 6 of the Land Acquisition Act, 1894 vide Notification No..... and*

OR

- (iii) *The property/land bearing Mpl No..... Khasra No..... (sic) the details of which are given in the statement has not been notified so far under Section (sic) of the Land Acquisition Act, 1894. This information is valid for a period of 30 days from the date of issue.*

Sd/-

27-5-1992

For Tahsildar (Notification)

For Additional District Magistrate (LA), Delhi."

(Clauses not applicable should be deleted.)"

The first document filed by the petitioner before us also purports to be a statement to be furnished to the Registering Officer for ensuring non-contravention of Section 8 of Delhi Lands (Restriction on Transfer) Act, 1972. This is the same document which is referred in para 13 of the judgment in Meera Sahni's case (supra). The format of the second document filed by the petitioners i.e. the document dated 10.10.97 issued by Tehsildar, (Notification) is identical to the document reproduced in para 31 of the judgment in Meera Sahni's case. In fact, a perusal of the original file in the case before us would show that the document dated 10.10.97 is printed on the back of the document which purports to be a statement to be furnished to the Registering Officer for ensuring non-contravention of Section 8 of Delhi Lands (Restriction on Transfer) Act, 1972.

10. In para 34 of the judgment, the Hon'ble Supreme Court noted that neither the application as envisaged u/s 5(1) of Delhi Lands (Restriction on Transfer) Act, 1972 was filed, nor was any documentary proof placed on record to indicate that any enquiry was made as was required u/s 5(2) of the Act. The Hon'ble Supreme Court held that such applications were not the applications required to be filed u/s 5 of Delhi Lands (Restriction on Transfer) Act, 1972 since they were not submitted in prescribed

form and there was nothing to show that they were produced and presented before the Competent Authority. In para 33 of the Judgment, the Hon'ble Supreme Court noted that Tehsildar was also not authorised to act as a Competent Authority as envisaged u/s 5, 6 and 8 of Delhi Lands Act, since Additional District Magistrate was the competent authority as envisaged u/s 2 (b) of the Act. It was specifically held that no other Authority or anyone else subordinate to him was ever authorised to exercise the aforesaid power. Dismissing the appeal filed by Meera Sahni & Ors., the Hon'ble Supreme Court stated as under:-

“38. It is, thus, established from the record placed before us that neither any proper application was made either by the predecessors-in-interest of the appellants or by the appellants themselves, as envisaged under Sections 4 and 5 of the Delhi Lands Act, nor was any valid and legal permission granted to the appellants by the competent authority under the provisions of the aforesaid Act. The transfers made in favour of the appellants by the original landholders by execution of the sale deed, therefore, are illegal and without jurisdiction. We have no hesitation in our mind in holding that no title could be conveyed or could pass to the appellants on the basis of such transfer and also that consequential mutation in favour of the appellants for the above reasons is found and held to be without jurisdiction.”

11. Emphasising that if the law requires an action to be taken in a particular manner, it has to be taken in that very manner, the Hon'ble Supreme Court observed as under:-

"It is by now a certain law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In this connection we may appropriately refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala wherein it was held as under(SCC pp 432-33, paras 31-32)

31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

'where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.'

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindh Pradesh and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad Case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."

12. Since no relief against acquisition of land was granted by the Hon'ble Supreme Court in *Meera Sahni's case (Supra)* on the basis of documents identical to the documents filed by the petitioner in this case, it would not be appropriate for us to take a contrary view and grant relief to the petitioner. Since it was contended before us that no document like the document dated 10.10.97 was filed in the cases of *Meera Sahni & Others*, we have called for and perused the files of LPA 332/2002, LPA 302/2002 and LPA 263/2002 against which CA 6493/02, CA 6494/02 and CA 6496/02 were filed before the Hon'ble Supreme Court and were dismissed along with the Appeal filed by Meera Sahni. The order passed by the Hon'ble Supreme Court was common to a number of appeals including the above referred three appeals. We find that in all these matters the documents relied upon by the Petitioner were absolutely identical to the documents filed before us and in fact, in these three cases, the document purporting to have been issued for Additional District Magistrate (Land Acquisition) contained a positive statement that land in question had not been notified so far u/s 6 of the Land Acquisition Act. This statement was false as the declaration u/s 6 of Land Acquisition Act had actually been issued in respect of the land which was subject matter of these

writ petitions. In the case before us, the statement contained in the document dated 10.10.97 does not contain a positive statement that no declaration u/s 6 of Land Acquisition Act had been issued in respect of land in question. The statement is that the declaration issued u/s 6 of Land Acquisition Act lapsed. Therefore, the statement made in the document relied upon by the petitioners in CA 6493/02, CA 6494/02 and CA 6496/02, which were dismissed by the Hon'ble Supreme Court, was much more damaging to the respondents, as compared to the statement made in the document dated 10.10.97 in the case before us. In fact, the claim of petitioners in the above referred Appeals before the Hon'ble Supreme Court was much stronger than that of the petitioners before us, as it was represented to them that the land had not been notified at all. Despite that, the Hon'ble Supreme Court declined to grant relief on the basis of documents relied upon in those appeals.

13. It was contended by the learned counsel for the petitioner that the order of the Hon'ble Supreme Court in Meera Sahni's case is based upon the findings that the documents relied upon by the appellants before the Hon'ble Supreme Court did not constitute the permission u/s 5 of Delhi Lands (Restriction on Transfer) Act, 1972 and the question whether such a document

would constitute estoppel or not was not at all examined by the Hon'ble Supreme Court and therefore it is open to this court to take a view that these documents constitute estoppel to the effect that the declaration made by the respondents u/s 6 of Land Acquisition Act had lapsed and consequently set aside the acquisition as being violative of Section 11A of Land Acquisition Act. We are unable to agree with the learned counsel for the petitioners. It would not be correct for us to take the view that had the appellants before the Hon'ble Supreme Court set up a plea of estoppel, the decision of the Court would have been otherwise. The presumption is that while deciding a case the court takes into consideration all arguments which were or could have been advanced before it. Therefore, we cannot say that had estoppel been set up before the Hon'ble Supreme Court, it would have taken a different view.

14. It was pointed out by the learned counsel for the petitioner that in the present case, the document dated 10.10.97 contains a statement that the notification issued u/s 6 of the Land Acquisition Act had lapsed whereas there is no such statement in the documents issued to the appellants before the Hon'ble Supreme Court. Since we have found, from record, that the documents relied upon by the appellants before the Hon'ble Supreme Court

contained a much more positive statement, and despite that no relief was granted in these cases, we will not be justified in granting relief on the basis of document dated 10.10.97.

The learned counsel for the petitioner has referred to *R.C. Sood & Co. Pvt. Ltd. Vs. Union of India*, AIR 1971 Delhi 170. In that case, the land of the petitioners was acquired under Land Acquisition Act by issuing notification in the year 1959 and 1962 but the acquisition was later on set aside by the court. A fresh notification was issued by Delhi Administration u/s 4 of Land Acquisition Act, in respect of the land of the petitioner on November 21, 1966. On January 20, 1967, Land Acquisition (Amendment and Validation) Ordinance Number 1/1967 was issued and on April 12, 1967, Land Acquisition (Amendment and Validation) Act was enacted, repealing the Ordinance. Thereafter a fresh notification u/s 6 & 7 of the Act was issued on September 28, 1967. The notifications issued on November 21, 1966 and September 28, 1967 were cancelled on March 24, 1968. On issue of the Ordinance and Amendment Act, the notifications issued in 1959 and 1962 stood revived. It was held by this court that the action of the government in issuing a fresh notification on November 21, 1966 under Section 4 of the Land Acquisition Act, before promulgation of Ordinance and enactment of Amendment

Act, was a representation that they proposed to commence the fresh acquisition proceedings. As a result of promulgation of Ordinance and enactment of Amendment Act, the earlier acquisition became valid retrospectively. At that stage, two courses were open to the Government; one was to proceed with the acquisition proceedings and pay compensation on the basis of market value as of November 21, 1966; the other course was to cancel or withdraw or obtain fresh acquisition proceedings in view of the revival of the earlier acquisition and since the respondents chose the former course by issuing a notice to the petitioners on June 6, 1967 for hearing of the objections filed by them, this was a representation that they would not rely upon the earlier acquisitions but proceed with the fresh acquisitions. It was held that since, relying upon representation of the Government, the petitioners did not file an application for revival of their reference u/s 18(2) of Land Acquisition Act and did not challenge the validity of the Ordinance and the Act nor did they challenge the validity of earlier acquisition proceedings on the grounds which were not considered in the earlier decisions, the petitioners had suffered a detriment by reason of their acting upon the representation of the respondents and therefore, the respondents were stopped from contending that they had not abandoned the earlier acquisition or

that they had no power to do so or that they were not bound to continue the fresh acquisition proceedings. This judgment does not apply to the facts and circumstances of the present case, as we find that the petitioners have failed to establish that they had acted to their detriment, on the representation made by the respondents.

15. Now, we proceed to deal with plea of estoppel. In our country, estoppel has been treated as a rule of evidence and given statutory recognition in Section 115 of Indian Evidence Act. The essence of the principle is that a person will not be allowed to plead the contrary of a fact or state of things, which he has formally asserted by words or conduct. In other words, the person is not allowed to say one thing at one time and opposite of it at another time. It means that a man is estopped from denying or withdrawing his previous assertion or from going back from his own act, even if it be to tell the truth. The principle is based on the premise that it would be inequitable and unjust to a person, if another person, who has made a mis-representation to him and induced him to act in a manner he would otherwise not have done, is allowed to deny or repudiate the fact of his former statement, to the loss and injury of the person who acted upon the mis-representation. The essential ingredients of estoppel as defined in

Section 115 of Indian Evidence Act are (a) there must be a representation by a person or his authorised agent to another in the form of a declaration, act or omission; (b) the representation must have been of existence of a fact; (c) the representation must have been made to be relied upon i.e. it must have been made under circumstances which amounted to an intention to cause or permit belief. (d) there must have been belief on the part of the other party, in its truth; (e) there must have been action on the face of such declaration, act or omission. In other words, the declaration, act or omission must have actually caused another to act on the face of it and it alter his position to his prejudice or detriment.

16. No doubt, the plea of estoppel is available against the Government, as much as against an individual, and in appropriate case it open to the court to grant relief on the citizens setting up and proving estoppel, as envisaged under Section 115 of Indian Evidence Act, against the Government or a public body. Normally, Public Institutions as well as the Government are as much bound to carry out representation of the facts relying upon which other persons have altered their position to their prejudice.

17. It is settled proposition of law that a plea of estoppel whether by record or by deed has to be specifically pleaded by the

party setting it up and such a plea cannot be raised during arguments, until it has been pleaded. In fact failure to plead stoppel may be construed as its waiver. The purpose behind insisting upon pleading is that the opposite party may show that there is no scope for its applicability, in the facts of the case.

18. This doctrine also stands incorporated in Order VI Rule 4 and Order VIII Rule 2 of Code of Civil Procedure. The plea of estoppel being a mixed question of fact and law, a party cannot be allowed to resort to such a plea without definite allegation in the pleading.

19. In *Kasinka Trading And Another Vs. Union Of India & Another* (1995) 1 SCC 274, the Hon'ble Supreme Court, inter alia, observed as under:

"There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all

aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation ”

20. It is true that the case before the Hon'ble Supreme Court one of invoking Promissory Estoppel and not estoppel as codified in Section 115 of Indian Evidence Act, but, the underlying principle being the same, it would equally apply to a plea of estoppel under Section 115 of Indian Evidence Act. In *Juggilal Kamlapat vs. Pratapmal Rameshwar*, AIR 1978 SC 389, the Hon'ble Supreme Court observed that:

“As the High court has pointed out, no case of estoppel was pleaded by the plaintiff and therefore, it was the plaintiff who should be precluded from raising the question of estoppel”

21. On a perusal of the writ petition, we find that the petitioner has nowhere set up the plea of estoppel. It has not been stated, anywhere in the petition that land in question was purchased by

the petitioner relying upon the statement made in the document dated 10.10.1997 to the effect that the declaration issued under Section 6 of Land Acquisition Act had lapsed. It has not been pleaded that had the respondents not stated, in the document dated 10.10.97, that the notification issued under Section 6 of Land Acquisition Act had lapsed, the petitioners would not have purchased land in question and would have purchased some other land utilising the money paid for purchase of the land subject matter of the writ petition. It has also not been pleaded in the petition that the petitioners were not at all aware of the writ petition filed by Ram Prasad and his nephews and the outcome of that petition. Rather, in their rejoinder dated 28.1.2004, to the counter affidavit of respondent DDA, the petitioners took the stand that writ petition No. 812 of 1994 (filed by Ram Prasad etc.) was transferred to Hon'ble Supreme Court and the stay was vacated with respect to the entire matter on 14.12.94 and therefore the limitation period started running from 14.12.94 as per the provisions of Section 11A of Land Acquisition Act. The stand taken in the rejoinder is a clear indicator of the fact that the writ petition No. 812 / 94 filed by Ram Prasad etc. as well as the orders passed in that writ petition were very much in their knowledge and in fact their case is based upon the stand that limitation period for the

purpose of making an award started running from 14.12.94 and not from 1.11.96. In fact, document dated 10.10.97 has repeatedly been referred as a NOC in the rejoinder filed by the petitioners. This is also their case in the rejoinder that they are in possession of 1 bigha 4 biswa of undivided interest in the entire property along with other legal heirs of Shri Hari Ram.

Mere one sentence in one para in the writ petition that the awards is null and void in view of admission of the respondents that notification under Sections 4 and 6 had already lapsed, does not amount to pleading stoppel, as envisaged in Section 115 of Evidence Act. In fact, the very basis of this petition is that a No Objection Certificate having been issued by the office of Additional District Magistrate (LA) and the NOC containing a statement that the declaration under Section 6 had lapsed, it was not permissible for the respondents to acquire the land. This petition was earlier dismissed on 18.11.2002. On dismissal of this writ petition, the petitioner filed a Review Petition dated 16.12.2002 and the review was sought on the sole ground that since the stay order was vacated by the Hon'ble Supreme Court on 14.12.94 and not on 31.10.96, there was an error in the judgment dated 18.11.2002. The petitioners did not seek review on the ground that their case was based upon estoppel in view of the statement made in the

document dated 10.10.97 and therefore even if the stay order was vacated by the Hon'ble Supreme Court on 1.11.96, as was claimed by the respondents, they were still entitled to relief on the basis of principle of estoppel.

22. Even if we proceed on the assumption that the petition contains facts necessary to lay down foundation of estoppel and therefore the plea of estoppel is open to the petitioners, we find that they have not been able to make out estoppel as envisaged under Sec. 115 of Indian Evidence Act.

Admittedly, Shri Ram Prasad and his brother Hari Ram, who sold the land in question to the petitioners, had filed writ petition No. 812 of 1994 challenging acquisition of land comprised in Khasra No. 288 of Village Jasola. Admittedly, the writ petition, filed by them was dismissed by the Hon'ble Supreme Court on 1.11.1996. Therefore, it cannot be denied that Shri Ram Prasad etc. predecessor in interest of the petitioners, were very much aware of the orders passed by this court as well as by the Supreme Court in the writ petition filed by them. They knew it very well that the Hon'ble Supreme Court had vacated the stay order passed by this court, only in respect of those lands of Village Jasola which were required for construction of Okhla Sewage Treatment Plant and since the land subject matter of this writ petition was not

amongst the lands required for construction of Okhla Sewage Treatment Plant, they also knew that the stay order passed by this court in the writ petition filed by them was operative till 1.11.96 when their writ petition was finally disposed of. Ram Prasad etc. also knew that notification under Section 6 of Land Acquisition Act issued in respect of land subject matter of this writ petition had not lapsed, as the award could be made within two years of vacation of stay. Once it is shown that true state of affairs, as regards the date on which the stay granted by this court was vacated, was in the knowledge of the predecessor in interest of the petitioners, it would be difficult to accept that the same was not known to the petitioners. We are, therefore, unable to accept that the factual position as regards the date of vacation of stay order passed by this court in respect of the land subject matter of this writ petition was not in the knowledge of the petitioners, at the time of purchasing land in question from Ram Prasad and his nephews.

23. The representation contained in the document dated 10.10.97 to the effect that the notification issued under Sec. 6 of Land Acquisition Act had lapsed, was made primarily to the vendors namely Ram Prasad and his nephews. It would be for the seller to ensure, before transferring an agricultural land, that it

was not subject matter of acquisition and therefore he was competent to transfer it by way of sale. This is more so, when the seller, having already filed a writ petition, knows it full well that the land had already been notified under Sections 4 and 6 of Land Acquisition Act and therefore in view of the provisions of Delhi Lands (Restrictions on Transfer) Act, 1972, he cannot transfer the same without obtaining permission from the 'Competent Authority'. Permission under Section 5 of 'The Delhi Land (Restrictions on Transfer) Act, 1972 has to be granted to the transferor and not to the transferee of the land. In fact, the Act does not envisage either any NOC or Status Report to be given by the Competent Authority or any other officer. It only refers to permission to transfer land.

We have noted earlier that neither in the writ petition nor in the rejoinder filed by them, the petitioners have claimed that they were not aware of notifications issued under L.A. Act, and the Writ Petition filed by Ram Prasad etc, challenging the notifications. We have also noted that in fact the petitioners have taken the stand that acquisition was time barred as the stay order was vacated on 14.12.94, not on 01.11.96. Assuming however that the petitioner were not aware of the writ petition filed by the sellers Ram Prasad etc., once, it came to their knowledge, from the document dated

10.10.97, that a declaration under Section 6 of Land Acquisition Act had been issued in respect of the land which they proposed to purchase, the first question that would come to their mind would be to know how and why the declaration had lapsed with exercise of due diligence, they could have found that a writ petition challenging acquisition of that land, was filed by Ram Prasad etc., the stay granted in that writ petition was vacated only on 1.11.96 and therefore it was equally permissible for the Land Acquisition Collector to pass award up to 31.3.1998 and the declaration would not lapse before 31.10.98.

Even otherwise we find it difficult to accept that the petitioner did not have knowledge of the acquisition proceedings and the writ petition filed by Ram Prasad etc. Had that been so, there was no need for either the vendor or the purchaser to seek any status report, clearance or NOC from the office of Additional District Magistrate (LA) because a person having no knowledge of the acquisition and litigation would entertain no doubt about the right of the vendors to transfer their land. The very fact that a document of the nature of documents dated 10.10.97 was sought from the office of Additional District Magistrate (LA) indicates that in fact, the parties knew that there was a cloud on the right of the sellers to transfer land in question and that is why they wanted to

have a document of this nature. The Delhi Lands (Restrictions on Transfer) Act, 1972 does not require any clearance/NOC to be obtained from the competent authority before transfer of a land which was not subjected to notification under Sections 4/6 of Land Acquisition Act.

24. Since the petitioners and their predecessor in interest knew that the award had been made well within the period of limitation prescribed for this purpose, and therefore the notification issued under Section 6 of Land Acquisition Act had in fact not lapsed, it cannot be said that the petitioners believed the statement made in the document dated 10.10.97 and acted upon it, by purchasing the land in question, relying upon that statement. If true facts were known to the petitioners, there can be no estoppels, if the statement made in the document dated 10.10.97 was not factually correct. In *Kishan Lal v. Mst. Chaltibai*, AIR 1959 SC 504, the Hon'ble Supreme Court observed as under:

"Whatever the acts of the respondent Chaltibai, whatever her admissions and whatever the course of conduct she pursued qua the appellant Kishorilal they could not amount to estoppel as both parties were equally conversant with the true facts."

In *R.S. Maddanappa Vs. Chandrama and Ors. AIR 1965 SC 1812*, 'P' was the owner of the property which was held in possession of her husband 'M'. 'C' was the daughter of 'P'. After demise of 'P', 'C' wrote a letter to her step mother stating therein that "everything belongs to her father and he has the sole authority to do anything." A will was executed by 'M' in respect of 'C's' property which was attested by 'C' and her husband. In a suit for possession, brought against 'M', he claimed estoppel against the "C" in view of the letter sent by her. The Hon'ble Supreme Court held that since 'M' knew the true position that these property belonged to 'P' and therefore he had no authority to deal with them, there was no possibility of erroneous belief about his title being created in the mind of 'M' because of what 'C' has said in her letter to her step mother. During the course of the judgment, the Hon'ble Supreme Court quoted the following observations from an English judgment:

"The object of estoppel is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. Therefore, where one person makes a misrepresentation to the other about a fact he would not be shut out by the rule of estoppel, if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation."

It was held by the Hon'ble Supreme Court that mere representation of matters of legal inference from facts known to both the parties, is not a ground of estoppel – Knowledge may be of fact or of law, the only difference being that on question of fact, knowledge will have to be proved whereas in case of law, it will have to be presumed, on the principle that no one can claim excuse of ignorance of law. Therefore, if true facts as regards date of vacation of stay in CWP 812/84 was known to the petitioners, they cannot claim that they had relied upon the statement contained in the document dated 10.10.97, to the effect that the declaration under Section 6 had lapsed. Once knowledge of essential facts is shown, then whether the declaration stands lapsed or not, is a question of legal inference and everyone, including the petitioners is supposed to know law of the land.

The petitioner cannot claim estoppel against the respondents if despite knowing true state of facts they chose to purchase the land in question, thereby taking a calculated risk of purchasing land which had already been acquired by the Government.

25. Another reason why no relief can be granted to the petitioner on the basis of the document dated 10.10.97 is that Tehsildar, who issued this document did not have either actual or

ostensible authority to issue such a document. As is evident from a bare perusal of document dated 10.10.97, Tehsildar purported to act on behalf of Additional District Magistrate (LA), meaning thereby that the officer authorised to issue such a document was Additional District Magistrate (LA) and Tehsildar could have issued it only with the approval of Additional District Magistrate (LA). As noted earlier, Tehsildar did not seek an approval of Additional District Magistrate (LA) before issuing the document dated 10.10.97. The Government cannot be made liable for an act committed by an employee who did not have either actual or ostensible authority to do such an act. The Competent Authority under The Delhi Lands (Restrictions on Transfer) Act, 1972 is Additional District Magistrate (LA) as noted by this court in *Meera Sahni and Anr. Vs. Lt. Governor of Delhi 89 (2001) DLT 484* and then again by the Hon'ble Supreme Court in *Meera Sahni Vs. Lt. Governor of Delhi 2008 (9) SCC 177*.

26. It was contended by learned counsel for the petitioner that a citizen is not expected to know whether the person issuing a document on behalf of the Competent Authority had actually taken approval of the Competent Authority or not and the citizens would be justified in presuming that before issuing such a document, the public servant concerned must have taken approval of the

Competent Authority. We are unable to agree with the learned counsel for the petitioner, since accepting his argument would result in a situation where any official of the Government may, by his unauthorised act, cause irretrievable loss to the Government and the exchequer, despite having no authority from the Government to do so.

In Public Law, the most obvious limitation on the Doctrine of Estoppel is that it cannot be invoked so as to give an authority, power which it does not in law possess. If the representation made by an official who has no legal power to do so is enforced against the government, ultra vires acts will gain legitimacy, which is a negation of the fundamental canons of administrative law. The proposition that a citizen is not expected to know the limits of an officer tends to legitimise unauthorised actions and to hold that a citizen acting on an unauthorised act, without enquiring into the limits of the authority of the person committing such an act can bind the Government, would be to create a power which does not exist. It has to be appreciated that in government, numerous officers work in a limited sphere, within their limited authority, imposed by the very nature of their work. To hold that the Govt. is bound by every act of its officers, irrespective of the field in which they are required to operate and the scope of their functions and

authority, may result in catastrophic results. In the present case, we cannot miss the fact in the matters of acquisition of land by the court, under the provisions of Land Acquisition Act, Tehsildar has no role to play. It is Land Acquisition Collector, or Additional District Magistrate or Secretary (L & B), who are concerned with acquisition of land by the Govt. Therefore, if a person believes and acts upon the representative made to him by a Tehsildar, in the matter of land acquisition, he does so at his own peril.

27. The power to acquire land is a statutory power of the Govt. given to by Land Acquisition Act. Since, there can, as a general rule, be no estoppel, against a statue, the Govt. cannot be denied right to exercise this statutory power, irrespective of the representation, if any, made by one of its employees to a citizen, if the same was incorrect and contrary to law. This is more so, when such a representation is made by a person who does not have either actual or ostensible authority to act on behalf of the Govt. The statement, contained in the document dated 10.10.97 that the declaration under Section 6 had lapsed, was incorrect and contrary to the provisions of Section 11A of Land Acquisition Act, which permitted the LAC to make award, within 2 years, after excluding the period of stay order. That being the position if such

a document is held to be binding on the Govt., that will be contrary to the statute i.e. Section 11A of Land Acquisition Act.

In *Ravinder Sharma & Anr. Vs. State of Punjab & Ors.*, AIR 1995 SC 277, a person who did not possess requisite qualification at the time of appointment as a clerk was further promoted as Assistant. The Hon'ble Supreme Court held that since he did not possess the requisite qualification, the appointment was against Punjab Public Service Commission (State Service Class III) Regulations and that being so no question of estoppel would ever arise.

In *Plamac Machine Manufacturing Company Vs. Collector of Central Excise*, AIR 1991 SC 999, it was found that the department had approved classification of the product under a wrong item. It was held that since there could be no estoppel against a Statute, department was not estopped from revising the classification.

In *Union of India & Anr. Vs. Sh. R.C. D'souza*, AIR 1987 SC 1172, the respondent was appointed as Assistant Commandant in C.R.P.F on temporary basis and was continued on re-employment. He was promoted as a Dy. Commandant, on temporary basis. He was asked to opt for absorption. It was found that in view of Rule 107 of CRPF Rules, he was not entitled for absorption in the Force.

The Hon'ble Supreme Court held that calling for option for absorption being contrary to the statutory rule, would not operate as an estoppel nor confer any right to absorption. It was observed by the Hon'ble Supreme Court in *Mathura Prasad & Sons Vs. State of Punjab & Ors.*, AIR 1962 SC 745 that there can be no estoppels against a Statute. It was noted by Hon'ble Supreme Court in *State of U.P. and Anr. V. U.P. Rajaya Khanij Vikas Nigam SS and Others; JT 2008 (6) SC 489* , that "*it is settled law that there can be no estoppel against a statute.*"

28. One more reason why the petitioners cannot challenge the acquisition is that they have purchased the land in question after issue of notification under Section 4 and declaration under Section 6 of the Land Acquisition Act. Being subsequent purchasers, they are not entitled, in law, to challenge the acquisition. In *Meera Sahni's case* (Supra), the Hon'ble Supreme Court, inter alia noted as under:

"17. When a piece of land is sought to be acquired, a notification under Section 4 of Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a

notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the government. A number of decisions of this Court have recognized the aforesaid proposition of law wherein it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act.

18. In U.P. Jal Nigam, Lucknow through its Chairman and Anr. v. Kalra Properties (P) Ltd., it was stated by this Court that:

3. ...Having regard to the facts of this case, we were not inclined to further adjourn the case nor to remit the case for fresh consideration by the High Court. It is well settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property....

19. In Sneh Prabha (Smt) and Ors. v. State of U.P. and Anr. it is stated as under:

5. ...It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1)

is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out and an implement to anyone to encumber the land acquired thereunder. It authorizes the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder....

20. The said proposition of law was also reiterated in the cases of Ajay Kishan Shinghal and Ors. v. Union of India and Star Wire (India) Ltd. v. State of Haryana and Ors.

21. In view of the aforesaid decisions it is by now well settled law that under the Land Acquisition Act the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation."

29. The award in this case was made on 31.10.98. The writ petition, has however been filed only on 28th February, 2001. There is no explanation for not challenging the acquisition for more than two years. During arguments it was contended by

learned counsel for the petitioners that the petitioners came to the court when they found that the land purchased by them was not being mutated. In this regard he relied upon a letter dated 11.11.2000 sent by the petitioner to Additional District Magistrate (LA). We have perused the letter referred to by learned counsel for the petitioner. It appears from the letter that the grievance of the petitioners was that the land purchased by them was not being mutated in their name despite NOC dated 10.10.97 and registered sale deed dated 17.10.1997, though under *Suwidha Scheme*, the mutation was to be completed by 1.10.1998. Since the land in question was purchased by the petitioner on 17.10.97 and they applied for mutation prior to 1.10.98, it cannot be accepted that they did not come to know of the cloud on their title, prior to the year 2001. Obviously the mutation in favour of the petitioner was not being granted because acquisition proceedings were still pending. Therefore, it cannot be said that before November, 2000, the petitioner had no reason to challenge the acquisition. Also, we find that the petition does not disclose as to when the petitioners came to know of the award dated 31.10.1998, though knowledge of the award and its number is admitted in para 4 of the petition. It is not their case in the writ petition that they had no knowledge of the award for more than two years. Therefore in our view the

petitioner have not explained the inordinate delay in coming to the court by way of this writ petition. This is yet another reason why we would not like to grant any relief to the petitioners.

30. We would also like to add that land in question, after taking possession by the Govt, was placed at the disposal of respondent DDA and was sold by it in the shape of plots, after developing the area. During pendency of this petition, an application was filed by the petitioners for staying the auction of those plots by the DDA. The relief sought by the petitioner was not granted to them. As a result, land, subject matter of the writ petition is no more available even with respondent/DDA. Faced with the situation, it was contended by the learned counsel for the petitioner that DDA can be directed to allot some other suitable land to the petitioner either in this very or in a nearby locality. We do not know whether any vacant land is available with DDA in this locality or in an adjoining locality or not and if available where the land is, what is its area and what is the land use prescribed for such land.

31. The land in question was agricultural land when it was purchased by the petitioners. Had there been no acquisition, they could not have used it for any other purpose other than agricultural purposes. Delhi Development Act does not permit DDA to sell or transfer agricultural land to anyone. Therefore, it is

not possible to direct DDA to provide alternative agricultural land to the petitioners. As regards allotment of developed plot of land to the petitioners, we do not have any material before us to find out what would have been present market value of land in question if it were to be used as agricultural land and therefore how much is the loss to the petitioners on account of its acquisition. Consequently, we cannot know how much developed land would compensate the petitioners for the loss on account of acquisition of their land. Unless the court knows the extent of loss caused to the petitioners on account of acquisition of their land and also knows what land is available with DDA which can be allotted to the petitioners by way of compensation and what is the present market value of that land, it is not possible for the court to take an appropriate view in this regard. In the facts and circumstances of the case and keeping in view the fact that no alternative relief has been claimed by amending the petition, despite the fact that after taking possession of the land in question it has already been developed and sold by way of auction, we see no justification to embark on such an exercise.

32. We also note that the sale deed contains an indemnity clause whereby the vendors have assured the petitioners that if the whole or any portion of the land is ever taken away or goes out of the

possession of the vendees on account of any legal defect in the ownership and title of the vendors, then the vendors will be liable and responsible to make good the loss suffered by the vendees. This is not a usual clause in a sale deed and in fact incorporating such a clause in the sale deed reflects the doubt of the petitioners on the right of the sellers to sell the land to them. Therefore, if the petitioners were not aware of the writ petition filed by the vendors, challenging acquisition of this land, and therefore they did not know that the declaration issued u/s 6 of Land Acquisition Act had actually not lapsed on account of that petition having been dismissed and stay having been vacated only on 1.11.96, and consequently the vendors did not have a legal right to sell this land to them, they can sue them for appropriate remedy, including suitable damages. In fact during the course of arguments, we are informed by Sh. Sanjay Poddar, learned counsel for the petitioners, that some land in this very locality is still available with the vendors. We say nothing on this. It is for the petitioners to decide what course of action if any they should adopt for their remedy against the vendors. But as far as the respondents are concerned, we are of the view that no relief can be granted to the petitioners against them.

For the reasons given above, we find no merit in the writ petition. The same is hereby dismissed.

V.K.JAIN, J.

VIKRAMAJIT SEN,J.

AUGUST 27, 2009
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