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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LA. APP. 968/2010

P.N. MEHRA

..... Appellant

Through: Mr. Parvinder Chauhan and
Mr. Nishant Prateek,
Advocates for the Appellant.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak and
Ms. K. Kiran Pathak,
Advocates for the Respondent
No.1.
None for the Respondent Nos.2
to 11.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. The Appellant in the aforesaid appeal seeks to impugn the judgment and order dated 05.08.2010 passed by the Additional District Judge whereunder the Respondent Nos.2 to 11 have been held entitled for the entire compensation for the acquisition of the land

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bearing Khasra No.62/19/2 min (0-10), situated in the Revenue Estate of Village Perhalad Pur Bangar, Delhi to the exclusion of the Appellant.

2. The aforesaid land, at one point of time, was owned by Shri Lakhmi Chand, son of Shri Jangali; Smt. Shanti Devi, daughter of Shri Shish Ram; Smt. Chandarkala, widow of Shri Chottu, Ram Chander, Dayal Singh and Lachhman, sons of Shri Chottu and Smt. Daya Kaur, daughter of Shri Chottu. By virtue of a Registered Sale Deed dated 09.01.1989 registered as Document No.727, Book No.-I, Volume No.5966 at pages 179-181 dated 18.01.1989, the Appellant purchased 1000 sq. yards, i.e., 1 Bigha out of the aforesaid land. Upon purchase of the land, the Appellant also came into possession and continued to be in possession without any obstruction, objection or interference from any corner. The factum of the Appellant having come into possession of the said land is duly recorded in the Sale Deed itself which forms part of the record. The said Sale Deed was executed by Shri Ram Murti Sharma, who was the duly constituted Attorney on behalf of the above named persons vide Registered

General Power of Attorney dated 31.10.1988 as set out in the recital clause of the Sale Deed itself.

3. There is no dispute as to the fact that the said land is governed by the provisions of Delhi Land Reforms Act, 1954 (hereinafter referred to as "The DLR Act"). The said Act by enacting Section 31 lays down that the interest of a Bhumidar is transferable. As such, the Appellant claims to have acquired a valid and binding title to the said land. Respondent No.1 proposed to acquire the said land under the provisions of the Land Acquisition Act, 1894 and after completing the procedural formalities, Award No.14/2002-03 came to be passed by the Land Acquisition Collector. Since the Appellant had a legal and valid subsisting interest in the said land, the Appellant made an application to the Land Acquisition Collector on 26/27.07.2007 stating therein that he had not been informed about the acquisition of his land, which had been purchased by him from Shri Ram Murti Sharma, General Attorney of the aforementioned persons and that he had moved an application for payment of compensation in respect of Khasra No.62/19/2 before the Land Acquisition Collector, Perhalad Pur Bangar, Kanhwala Court Complex, but had not been informed the

fate of his application till date. The Respondent No.1, however, failed to take any action on the request for payment of compensation made by the Appellant and the Appellant was constrained to make another application to the Respondent No.1 for release of compensation with an alternate prayer for making reference under Sections 30-31 of the Land Acquisition Act, 1894 to the Court of the District Judge concerned for the adjudication thereof.

4. Ultimately, the Respondent No.1 made a reference under Sections 30-31 of the Land Acquisition Act, which has resulted in the passing of the impugned judgment. Pursuant to the aforesaid reference, the learned Trial Court issued notice of the reference to the Appellant as well as to the Respondent Nos.2 to 11. In compliance with the aforesaid notice, the Appellant appeared and filed his statement of claim. The Respondent Nos.2 to 11 also appeared, but despite repeated opportunities failed to file any statement of claim and ultimately vide order dated 08.04.2010 the Respondent Nos.2 to 11 were directed to be proceeded *ex parte*. Resultantly, before the learned Trial Court there was no claim on behalf of the Respondent Nos.2 to 11, meaning thereby that the Respondent Nos.2 to 11 neither

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made any demand for payment of the compensation nor disputed the right of the Appellant to receive the compensation. Pertinently also, the Respondent Nos.2 to 11 at no point of time disputed the Sale Deed or the title of the Appellant to the said land. The Appellant entered the witness box in support of his claim which he proved by filing his own affidavit by way of evidence Ex.IP11W-1/A. He deposed that he had purchased the acquired land vide registered Sale Deed dated 19.01.1989 from Shri Ram Murti Sharma, General Attorney of Laxmi Chand, Smt. Shanti Devi, Smt. Chander Kala, Shri Ram Chander, Shri Dayal Singh and Shri Laxman (Ex.IP 11/1), hence he was entitled to the entire compensation. Significantly, the Appellant was not subjected to any cross-examination and his testimony thus remains unrebutted and unchallenged on record. In the course of final arguments, however, counsel for the Respondent Nos.2 to 11 appeared and filed an application for setting aside the *ex parte* order, which was dismissed by the learned Trial Court. It was then sought to be argued on their behalf that from the evidence led by the Appellant it was not proved that he had purchased the acquired land from the recorded Bhumidar of the land as the General Power of

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Attorney executed by Shri Ram Murti Sharma had not been produced.

It was further argued that as such, the Appellant was not entitled to any portion of the compensation and it was the Respondent Nos.2 to 11 who were entitled to the entire compensation.

5. The learned Additional District Judge vide his impugned judgment and order dated 05.08.2010 answered the reference against the Appellant and in favour of the Respondent Nos.2 to 11. Aggrieved therefrom, the present appeal has been preferred by the Appellant before this Court along with an application under Order XLI Rule 27 of the Code of Civil Procedure being CM No.20071/2010 for taking on record the certified copy of the Registered Power of Attorney dated 31.10.1988 as additional evidence. The said application has been allowed by me by my separate order passed today and thus the certified copy of the Registered Power of Attorney dated 31.10.1988 forms part of the record.

6. Notice of the filing of the present appeal and of the application CM No.20071/2010 was duly issued to the Respondent Nos.2 to 11, none appeared for the Respondent Nos.2 to 11 at the time of hearing

of the present appeal, though a reply was placed on record by the said Respondents stating therein that the order passed by the learned Additional District Judge, Delhi does not call for any interference as they (the Respondent Nos.2 to 11) are the recorded Bhumidars of the land in question which was taken into possession by the Government from them; and the Appellant had no legal right, title or interest in the land in question. The alleged Sale Deed, it was stated for the first time, was a forged and fabricated document which had been created on the basis of another forged and fabricated document, i.e., the alleged GPA in favour of Shri Ram Murti Sharma. It was further stated that in the alleged GPA all the parties were shown to be residents of Delhi, the property was situated in Delhi but the GPA was registered in Gurgaon, Haryana. It was also submitted that the land in question had not been mutated in the name of the Appellant and it is well settled that mutation is an indispensable and important part of any transaction involving transfer of ownership of land. They were the Bhumidars of the land in question and they had never transferred their right in favour of any person. The judgment passed by the learned Additional District Judge was a well reasoned detailed

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order which suffers from no infirmity; the appeal of the Appellant was not tenable and liable to be dismissed.

7. This Court has heard Mr. Parvinder Chauhan, learned counsel for the Appellant and Mr. Sanjay Kumar Pathak, learned counsel for the Respondent No.1 – Union of India. As stated hereinabove, none appeared on behalf of the Respondent Nos.2 to 11 except for the limited purpose of filing reply and hence this Court did not have the advantage of hearing the counsel for the Respondents.

8. The undisputed facts are that the Appellant has proved on record the Registered Sale Deed dated 9th January, 1989 executed in his favour by Shri Ram Murti Sharma, General Attorney of Shri Lakhmi Chand, son of Shri Jangali; Smt. Shanti Devi, daughter of Shri Shish Ram; Smt. Chandarkala, widow of Shri Chottu, Ram Chander, Dayal Singh and Lachhman, sons of Shri Chottu and Smt. Daya Kaur, daughter of Shri Chottu. Mutation of the said land has admittedly not been carried out. At the behest of the Appellant, a reference under Sections 30 and 31 of the Land Acquisition Act, 1894 was sent by the Land Acquisition Collector to the Court of the learned Additional District Judge to decide the dispute of apportionment of

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compensation with regard to the land covered by the aforesaid Sale Deed executed in favour of the Appellant bearing Khasra No.62/19/2 min (0-10) situated in the Revenue Estate of Village Perhalad Pur Bangar, which was acquired by Award No.14/2002-03. The Appellant appeared in the witness box before the Reference Court to tender in evidence his affidavit Ex.IP11W-1/A and to depose that he had purchased the acquired land through a duly Registered Sale Deed Ex.IP11/1 and was hence entitled to the entire compensation on the acquisition of the said land. The testimony of the Appellant is unrebutted and unchallenged on record, inasmuch as the Respondents did not choose to cross-examine the Appellant or to adduce any other evidence to rebut the same nor in fact they filed any claim for the compensation before the Reference Court. At the time of arguments, only two grounds appear to have been urged before the Reference Court by the Respondent Nos.2 to 11, being:

- (i) That the Appellant had failed to prove the Sale Deed as he had not produced the General Power of Attorney executed by the owners in favour of the General Power of Attorney holder Shri Ram Murti Sharma, hence it was not proved that Shri Ram

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Murti Sharma was entitled to execute the Sale Deed of the acquired land in favour of the Appellant and

- (ii) That the Appellant had failed to explain why despite purchasing the land in the year 1989 no mutation was made in his name in the revenue record or why he had not applied for mutation of the land, whereas according to Section 22 of the Delhi Land Revenue Act, 1954, it is the duty of the purchaser to apply before the Tehsildar for mutation of his name in the revenue record. The Appellant not having applied for mutation of the land did not acquire Bhumidari rights in the acquired land. Respondent Nos.2 to 11 (IP Nos.1 to 10 in the reference proceedings) were the recorded Bhumidars of the land in question at the time of acquisition of the land and hence entitled to receive the entire compensation as per their share.

The aforesaid contentions raised at the time of arguments by the Respondents, without pleadings or proof, were upheld by the Reference Court, resulting in the negation of the claim of the Appellant.

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9. With regard to the finding of the Reference Court on the first contention of the Respondents, viz., that it did not stand proved on record that any General Power of Attorney had been executed by the Respondents in favour of Shri Ram Murti Sharma, the said aspect no longer survives for consideration as the Registered General Power of Attorney executed by the Respondents in favour of Shri Ram Murti Sharma now stands duly proved on record as Ex.PX.

10. The only issue which now survives for consideration is what is the effect of the Appellant's neglect/failure to have had the land mutated in his favour. In this regard, the learned counsel for the Appellant heavily relied upon the judgment of the Hon'ble Supreme Court rendered in *Jattu Ram vs. Hakam Singh and Others* reported in (1993) 4 SCC 403, to contend that it is settled law that entries in revenue records are only for fiscal purposes and they create no title. Learned counsel thus contended that the mutation of the property neither confers title nor takes it away. Once a Registered Sale Deed has been proved on record by the Appellant, unless there is contra evidence to suggest that the sale document is not a genuine one, the Appellant stands vested with the right, title and interest in the

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property in question. Mutation or the lack of it would have no bearing on the aspect of title. The sale document has been proved in the instant case in the course of the testimony of the Appellant recorded by the Reference Court, which testimony is unchallenged and unrebutted on record. The oral contention of the *ex parte* Respondents at the time of arguments that the Sale Deed was of no value without the Appellant proving on record the Registered Power of Attorney in favour of the person who had executed the Sale Deed having been raised at the stage of final arguments has also been met with by the Appellant proving on record the Registered Power of Attorney Ex.PX executed by the Respondents in favour of Shri Ram Murti Sharma.

11. Reliance was also placed by the counsel for the Appellant upon the decision rendered by the Supreme Court in the case of ***Ramesh Chand Ardawatiya vs. Anil Panjwani, (2003) 7 SCC 350*** to contend that in the absence of denial of plaint averments, the burden of proof on the Plaintiff is not very heavy. A *prima facie* proof of the relevant facts constituting the cause of action would suffice, and the Court would grant the Plaintiff such relief as to which he may in law be

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found entitled. It was urged that in view of the aforesaid law laid down by the Apex Court, the General Power of Attorney was not produced at the trial stage since no objection was raised to the Sale Deed at that stage and the same having been produced now, it stands duly established on record that the Appellant was the owner of the land in question at the time of acquisition.

12. Reference was next made by the learned counsel for the Appellant to the judgments of this Court rendered in *Jai Parkash and Anr. vs. Smt. Pushpa and Anr.*, ILR (1999) Delhi 145, *Pyare vs. The Financial Commissioner and Ors.*, 94 (2001) DLT 348 and *Govt. of NCT of Delhi, Land and Building Department vs. Smt. Poonam Gupta and Anr.*, 125 (2005) DLT 423 (DB), to urge that in view of the provisions of Section 1(2)(c) of the DLR Act, the provisions of the DLR Act would not apply to the areas acquired under the Land Acquisition Act. The said provision reads as follows:-

- "1. Short title, extent and commencement—
- (1) xxx xxx xxx
- (2) It extends to the whole of the Union territory of Delhi, but shall not apply to—
 - (a) to (b) xxx xxx xxx
 - (c) areas held and occupied for a public purpose or a work of public utility and declared as such by the Chief Commissioner or

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acquired under the Land Acquisition Act, 1894, or any other enactment other than this Act, relating to acquisition of land for a public purpose.

(3) & (4) xxx xxx xxx”

13. Learned counsel contended that in view of the fact that the provisions of the DLR Act would not apply to acquired land in the instant case, the right of the Bhumidar, if any, in such land could not be said to be subsisting after the land was acquired in accordance with the provisions of the Land Acquisition Act and hence the contention of the Respondents that they were the Bhumidars of the land in question and, therefore, entitled to receive compensation for the acquired land is untenable. I am in complete agreement with the aforesaid contention of the learned counsel for the Appellant. The decisions rendered by this Court from time to time also reinforce the aforesaid view.

14. In the case of *Jai Parkash and Anr. vs. Smt. Pushpa and Anr. (supra)*, a learned Single Judge of this Court (Justice Dr. M.K. Sharma as His Lordship then was) while considering the issue as to whether the provisions of the Delhi Land Reforms Act, 1954 or the provisions of the Hindu Succession Act, 1956 would apply in the

matter of substitution of the legal representatives of the deceased Ram

Nath made the following pertinent observations:-

"10. As provided for under Section 1(2)(c) the provisions of the Delhi Land Reforms Act would not apply to the areas acquired under the Land Acquisition Act. Provisions of Section 50 would be applicable so long the land continues to be governed by the provisions of the Delhi Land Reforms Act and also so long the concerned person continues to be a Bhumidar in such land. With the acquisition of the land the same vested on (sic. in) the government and, therefore, the right of the Bhumidar, if any, in the land could not be said to be subsisting after the land was acquired in accordance with the provisions of the Land Acquisition Act.

11. In the case in hand not only the land vested in the government but Award was also passed by the Collector in respect of the land and the compensation was fixed and, therefore, by no stretch of imagination it can be said that the predecessor in interest of the petitioners continued to hold bhumidari right over the aforesaid land. The object and purpose of enacting the provisions of Section 50 of the Delhi Land Reforms Act by giving preference to males in succession of Bhumidar rights appears to be to ensure that land goes to actual tiller and there is avoidance of unnecessary fragmentation. After the acquisition of the land by the government the said object and purpose is lost and, therefore, the provision of the Delhi Land Reforms Act could not be made applicable in respect of acquired land. Consequently, the provisions of the general Law of Succession as provided for under the Hindu Succession Act should apply in the matter of succession and also in the matter of entitlement to compensation payable for the acquisition made under the Land Acquisition Act."

15. In the case of *Pyare vs. The Financial Commissioner and Ors.* (*supra*), a Division Bench of this Court while considering the question of apportionment of compensation of land acquired under the Land Acquisition Act, 1894 held that by virtue of the provisions of Clause (b) of Section 67 of the DLR Act, 1954 the interest of a Bhumidar in his holding automatically gets extinguished when the land comprised in his holding is acquired under any law, such as the Land Acquisition Act, or any other Act relating to the acquisition of land. For the facility of ready reference, the provisions of Section 67, which are apposite, are reproduced hereunder:-

“67. Extinction of the interest of a Bhumidhar.— The interest of a Bhumidhar in his holding or any part thereof shall be extinguished—

- (a) when he dies intestate leaving no heir entitled to inherit in accordance with the provisions of this Act,***
- (b) when the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land,***
- (bb) when a declaration in respect of such holding or part is made under clause (a) of sub-section (b) of section 65A,***
- (c) when he has been ejected in accordance with the provisions of this Act, or***
- (d) when he has been deprived of possession and his right to recover possession is barred by limitation.”***

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16. In *Govt. of NCT of Delhi, Land and Building Department vs. Smt. Poonam Gupta and Anr. (supra)*, the Division Bench referring to the decision in *Pyare vs. The Financial Commissioner and Ors. (supra)* held that a specific contention had been raised before them which had not been raised in *Pyare's case* that the land is not acquired until its possession is taken by the appropriate Government and they were inclined to uphold the said contention and as such to that extent the ratio of the decision in *Pyare vs. The Financial Commissioner and Ors. (supra)* that when a Notification is issued under Section 4 of the Land Acquisition Act the individual land is acquired, which was rendered on the basis of the provisions of Section 67(b) of the DLR Act, was of no avail to the Appellant. In the said case the Respondent No.1 had filed proceedings under Section 84 of the DLR Act for being declared as a Bhumidar of the land in question in terms of Section 85 of the DLR Act, which were pending adjudication when the Notification under Section 4 of the Land Acquisition Act, 1894 was issued proposing to acquire the said land, and in this scenario a contention was raised that the SDM/RA had no jurisdiction to adjudicate the case filed by the Respondent No.1 after

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the Notification under Section 4 of the Land Acquisition Act was issued.

17. In view of the aforesaid discussion, the appeal is allowed and the impugned judgment and order dated 05.08.2010 passed by the Additional District Judge is set aside. The Appellant is held entitled for the compensation for the acquisition of the land bearing Khasra No.62/19/2 min (0-10), situated in the Revenue Estate of Village Perhalad Pur Bangar, Delhi.

18. LA. APP. 968/2010 stands disposed of accordingly.

Reva Khetrapal
REVA KHETRAPAL
(JUDGE)

January 10, 2013
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