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

+ LPA 7/2016

SHRI PANCHAYATI AKHARA

NAYA UDASEEN

..... Appellant

Represented by: Mr.Pradeep K.Bakshi, Advocate with
Mr.Rajat Navet, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Ms.Suparana Srivastava, Advocate
with Mr.Manudev Sharma, Advocate
for R-1
Mr.Dhanesh Relan, Advocate for
DDA

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **06.01.2016**

CM No.351/2016

Allowed subject to just exceptions.

LPA No.7/2016

1. Case pleaded by the appellant in the writ petition was that on the land comprised in Khasra No.3146/923 and 3075/922 situated in the revenue estate of Village Basai Darapur a gurudwara/temple existed since last 57 years. Before partition in the year 1947 one Sh.Kishan Singh, the owner of the land, gave it to one Lahori Mal Sadhu who was an Udaseen Sadhu. Under a will executed by Lahori Mal Sadhu, the appellant was bequeathed

the land in question. It was pleaded further that the land could not be acquired. It was pleaded that DDA had no right to take possession of the land.

2. In the counter affidavit filed by DDA it was pleaded that under a rehabilitation package, terms contained in a letter dated September 02, 1982, the Ministry of Rehabilitation transferred different tracks of land to DDA which included the land forming subject matter of the writ petition and that physical possession was taken over by DDA on November 12, 1984. It was pleaded that the site was vacant save and except a Shiv Mandir by way of encroachment covering 126 square yards. In the counter affidavit filed by the Union of India it was pleaded that the land was acquired pursuant to an award dated March 11, 1949 being award No.1304. It was pleaded that since the last page of the award was not available it was difficult to disclose the exact date of the publication of the award. It was pleaded that as per the record possession of the acquired land was taken over on March 11, 1949.

3. Issue debated before the learned Single Judge was whether the Government made good its stand that the land was acquired as per the award in question.

4. The reasoning against the appellant is to be found in paragraph 20 onwards of the impugned decision dated December 08, 2015.

5. Having heard learned counsel for the parties we agree with the view taken by the learned Single Judge that Section 114(e) of the Evidence Act was squarely applicable, given the fact that the writ petition was filed after more than 60 years of the award. The truncated record has rightly been found sufficient by the learned Single Judge to hold against the appellant on the presumption raised that official acts are performed as per law. The

learned Single Judge has noted a large number of decisions to sustain the reasoning while dismissing the writ petition.

6. The truncated record which was produced, and the reason for non-production of the entire record is the huge delay between the date of acquisition of the filing of the writ petition, shows that in the year 1949 an award was made which included the land forming subject matter of the writ petition. Under a package deal the land in question was transferred by the Ministry of Rehabilitation to DDA along with possession. House tax record would evince that there was a small built up structure on the land which justifies the stand taken by the Government that save and except 126 square yards where a temple was constructed after encroachment there was no construction, as claimed by the appellant, as of the year 1982 when under the package deal Ministry of Rehabilitation transferred the land to DDA. There is intrinsic evidence that encroachments by way of additional constructions were made post 1982.

7. We find no merit in the appeal which is dismissed in limine but without any order as to costs.

CM No.350/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 06, 2016

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