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

+ CM(M) 208/2017 and CM Nos. 6927-28/2017

LALA RAM (SINCE DECEASED)

THR LEGAL HEIRS.

.... Petitioner

Through Ms.Deebajyoti Behuria, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

07.03.2017

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1. The present petition is filed under Article 227 of the Constitution of India to impugn the orders dated 18.07.2016 and 31.08.2016.
2. The case of the petitioners is that their predecessor Sh. Lala Ram in 1972 filed a suit for permanent injunction before the Civil Judge. Along with the suit, he filed an application under Order 39 Rules 1 & 2 CPC to restrain the respondent from interfering in the possession of the petitioner's land. During the pendency of the suit, Sh.Lala Ram, the original plaintiff expired and the legal heirs were brought on record. However, sometime down the line, the suit file got misplaced from the judicial record.
3. A complaint was filed by the counsel for the petitioner Sh. D.K. Singhal before the District and Sessions Judge, Tis Hazari, Delhi. The District and Sessions Judge entrusted the enquiry proceedings on 04.06.2011 to the court of Ms.Shefali Sharma, Civil Judge. By its impugned order dated

18.07.2016, the trial court noted that number of witnesses were examined including the clerk from the dispatch branch of the High Court but the file could not be traced. Hence, it was not possible to fix responsibility of any person for the loss of judicial record. Some of the relevant records indicating the dispatch of the file are also not available. It noted that notices were issued to the parties to the suit and their respective counsel and the possible reconstruction of the record had been carried out. It however noted that the counsel for the plaintiff/petitioners had already withdrawn the suit by a statement made on 10.02.2012. In pursuance to the directions of the District and Sessions Judge, the Civil Judge thereafter consigned the file to the record room.

4. I have heard learned counsel for the petitioner.

5. She has submitted that Sh. D.K.Singhal, the counsel was not engaged by the LRs of Sh. Lala Ram and that he had been engaged only by Sh.Lala Ram. Hence, he could not have withdrawn the suit. She further submits that the petitioners were in cultivatory possession of the land which has been take over by the respondent and hence, directions should be passed for compensation.

6. As far as the withdrawal of the suit is concerned, it is the case of the petitioners that the file had been lost after the LRs of Late Sh. Lala Ram were brought on record. It is also their case that a complaint regarding the loss of the judicial file was made by their counsel i.e. Sh. D.K. Singhal. Hence to now contend that Sh. D.K. Singhal was not their counsel but the counsel of Late Sh. Lala Ram is an erroneous submission contrary to the record and cannot be accepted. It is the said counsel who withdrew the suit.

7. Even otherwise, in the course of arguments, it appears that the stress

of the petitioners is that they should be given just compensation for the land which appears to have been acquired for the metro project by the Metro Corporation and other government agencies. It is not clear as to how in the present proceedings which is a suit allegedly filed for injunction issues pertaining to compensation for alleged acquisition by taking possession of the land can be adjudicated upon. The prayer and the relief sought is misconceived and misplaced. In case the petitioners seek compensation as above, they have to approach the appropriate forum. The petition is without merit and is dismissed.

8. Pending applications, if any, also stand dismissed.

JAYANT NATH, J.

MARCH 07, 2017/rb