

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

+ **Ex.FA No. 9/2017 and Ex.FA No. 8/2017**

% **26th April, 2017**

1. **Ex.FA No. 9/2017**

DEEP CHAND & ORS. Appellants

Through: Mr. Shashindra Tripathi,
Advocate.

versus

UNION OF INDIA Respondent

Through:

2. **Ex.FA No. 8/2017**

RISHI PAL SINGH VERMA & ORS. Appellants

Through: Mr. Shashindra Tripathi,
Advocate.

versus

UNION OF INDIA Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.15754/2017 (exemption) in Ex.FA No.9/2017

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M.No. 15755/2017 (for condonation of delay) in Ex.FA No.9/2017

2. For the reasons stated in the application, delay of 26 days

in re-filing the appeal is condoned.

C.M. stands disposed of.

Ex.FA No. 9/2017

3. This Execution First Appeal is filed by the appellants/decreed holders impugning the order of the executing court dated 7.1.2017 dismissing the second execution petition filed by the appellants/decreed holders for execution of the judgment and decree of the High Court dated 7.12.2000 in RFA no.111/1997 whereby the High Court enhanced the compensation granted by the ADJ of the acquired land, and the High Court awarded compensation at Rs.345/- per sq. yd. i.e Rs. 3,45,000/- per bigha. The appellants/decreed holders plead that though the earlier execution petition which was filed on 31.3.2001 was disposed of on 7.4.2005, however, since appellants/decreed holders had only received two amounts under the first execution petition of Rs.6,48,470/- and Rs.17,92,658/- and which amounts do not total up to grant of compensation at Rs.345/- per sq. yd. in terms of the judgment dated 7.12.2000 of the High Court in RFA No.111/1997, hence the second execution petition should be allowed and the appellants/decreed holders be granted enhanced compensation in terms of the judgment and decree of the High Court dated 7.12.2000. It is argued that in fact the Union of India in the case of appellants/decreed holders had challenged the judgment dated 7.12.2000 before the Supreme Court

being SLP (C) No. 6439/2003, but this SLP was dismissed on 28.7.2003, and therefore appellants/decreed holders are entitled to the additional compensation after giving adjustment of the received amounts of Rs. 6,48,470/- and Rs. 17,92,658/-.

4. Unfortunately the appellants/decreed holders are trying to be clever by half. The appellants/decreed holders are trying to take advantage of a technicality only and this will be clear from the discussion given hereinafter.

5. The facts of the case are that no doubt as regards the appellants/decreed holders the High Court in RFA No. 111/1997 awarded compensation of Rs. 345/- per sq. yd. and challenge to this judgment by the Union of India was dismissed on 28.7.2003 so far as the appellants/decreed holders are concerned, however, it is undisputed that the judgment of the High Court dated 7.12.2000 in RFA No. 111/1997 was also challenged by the Delhi Development Authority (DDA) before the Supreme Court and the judgment of the Supreme Court allowing this civil appeal is reported in the case of ***Delhi Development Authority Vs. Bali Ram Sharma and Others (2004) 6 SCC 533***. This was Civil Appeal No. 6767/2002. In this civil appeal the Supreme Court set aside the judgment of the High Court in RFA No. 111/1997 dated 7.12.2000 and only awarded compensation of Rs.

76,550/- per bigha instead of Rs. 3,45,000/- per bigha as granted by the High Court in RFA No. 111/1997 decided on 7.12.2000.

6. The earlier execution petition filed by the appellants/decreed holders on 31.3.2001 seeking execution of the judgment dated 7.12.2000 in RFA No. 111/1997 was consigned to the record room on 7.4.2005 i.e after the decision in the case of **Bali Ram Sharma (supra)** dated 3.8.2004. The earlier execution petition which was filed on 31.3.2001 remained pending for just over about four years till it was disposed of on 7.4.2005. Obviously, the earlier execution petition remained pending because the judgment dated 7.12.2000 in RFA No. 111/1997 was challenged before the Supreme Court in the case of **Bali Ram Sharma (supra)**. The execution petition continued in fact in the interest of the various appellants/decreed holders as per the judgment in RFA No. 111/1997 so as to not unnecessarily prolong the litigation and give them at least the compensation which was due to them as per the judgment of the Supreme Court in the case of **Bali Ram Sharma (supra)** dated 3.8.2004 besides reducing the interest burden upon the DDA. This becomes clear from the letter dated 6.12.2004 of the DDA, copy of which has been filed in the connected Ex. FA No. 8/2007 and this letter of the DDA dated 6.12.2004 reads as under:-

“F1(12)99LMA/Pt/360

Dated 6.12.2004

To
The Dy Controller of Accounts
L&B Department, GNCTD Vikas Bhawan
I.P. Estate, New Delhi – 110002.

Sir,

Sub:- Payment of enhanced compensation in respect of village Dallupura and Kondali

Demand in respect of villages Dallupura and Kondali has been raised by you @ Rs. 3,45,000/-PB. Against this steep rise, DDA filed SLP before Hon'ble Supreme Court. As you know that the Hon'ble Supreme Court allowed the SLP of DDA and modified the amount of compensation from Rs. 3,45,000/- per bigha to Rs. 76,550/- per bigha plus other statutory benefits against the notification dated 17.11.1980. The Hon'ble Supreme Court allowed 5% to 10% increase in the market value plus other statutory benefits for the subsequent notification dated 25.2.1981 and 24.11.1981 respectively. On the basis of this court order, certain RENMs in respect of village Dallupura @ Rs. 76,550/-PB were received from the LAC concern and payment was also released in those cases. But RENMs in other remaining cases were not received from the concern LAC/L&B in spite of our best efforts. Repeated letters to LAC/L&B yielded no result at all. Delay on account of non submission of revised ENMs also entails heavy interest burden on DDA. Hence it was decided that to save the department from payment of further interest, the demand raised @ Rs. 3,45,000/- PB may be reduced to Rs. 76,550/- as per order of Hon'ble Supreme Court in LA No. 6767 of 2002 pronounced on 3.8.2004, and the proportionate amount so worked out may be released without waiting for receipt of RENMs from LAC. Since payment @ Rs. 30,000/- has already been released on payable demand long back, the remaining payment @ Rs. 46,550/- is being released and the balance amount has been adjusted. The necessary remark to this effect has been recorded on the cheque forwarding letter. In this connection it is also to inform you that payment @ Rs. 76,550/- has already been released to your earlier in a number of cases before this order.

Your are therefore, requested to inform the concern LAC and drop the demand against DDA for all the cases where balance payment @ Rs. 76,550/- has been released to you, in respect of the said villages.

Yours faithfully,
s/d

(S.P. PADHY)
Director (LM)HQ

Copy forwarded for information and necessary action to :-

1. Secy., L&B, GNCTD, Vikas Bhawan, New Delhi
2. Divisional Commissioner-cum-Secy. (Revenue), 5, Sham Nath Marg, ND
3. Dy. Commissioner (East),
4. ADM/LAC (East)
5. CLM, DDA for kind information.

s/d
Director (LM)HQ

7. Therefore, it is seen that though the appellants/decreed holders had filed the first execution petition on 31.3.2003 for execution of the judgment of the High Court dated 7.12.2000 in RFA No. 111/1997, however, such execution petition was allowed to be got disposed of by them as per the order of the executing court dated 7.4.2005 in the first execution petition. The order dated 7.4.2005 in the first/earlier execution petition filed by the present appellants/decreed holders, and passed in the presence of the counsel for the appellants/decreed holders, reads as under:-

“7/4/2005

Present Counsel for the D.H.

Four vouchers issued. File be consigned to record room.

ADJ, Delhi”

8. Obviously, the appellants/decreed holders got the earlier execution petition disposed of, though technically not recorded as satisfied, but, the order dated 7.4.2005 clearly stated that the necessary vouchers have been issued i.e payments have been made, and which was because of the compensation granted in RFA No. 111/1997 by the judgment dated 7.12.2000 being reduced by the judgment dated 3.8.2004 of the Supreme Court in the case of **Bali Ram Sharma** (*supra*).

9. Obviously, now because of the ‘legal advice’ the appellants/decreed holders have thereafter filed the present second

execution petition on 26.4.2011 i.e after around 6 years of disposal of the first/earlier execution petition, and this is on account of the fact that appellants/decreed holders came to know that in their case an SLP was filed in the Supreme Court against the judgment dated 7.12.2000 in RFA No.111/1997 and which SLP(C) No. 6439/2003, was dismissed by the Supreme Court *in limine* on 28.7.2003. However, the dismissal of the SLP was not on merits but it was only dismissed on the ground of delay because the single line order of the Supreme Court dated 28.7.2003 is “The Special Leave Petition is dismissed on the ground of delay”. In fact, in spite of the dismissal of the SLP in the case of the appellants/decreed holders by the order dated 28.7.2003 of the Supreme Court, the appellants/decreed holders got their execution petition disposed of on 7.4.2005 inasmuch as by 7.4.2005 the Supreme Court had decided the case of ***Bali Rama Sharma (supra)***, and which was decided on 3.8.2004, thereby reducing the compensation granted by the High Court from Rs. 3,45,000/- per bigha to Rs. 76,550/- per bigha. The appellants/decreed holders are therefore estopped from filing the present second execution petition inasmuch if the earlier execution petition was not got disposed by the appellants/decreed holders then either the Union of India or the DDA would have sought the filing of a curative petition or any other remedy including a review petition for

setting aside the order dated 28.7.2003 dismissing the SLP in the case of appellants/decreed holders on the ground that in ***Bali Ram Sharma's (supra)*** case the judgment of the High Court dated 7.12.2000 in RFA No.111/1997 had been set aside.

10. Learned counsel for the appellants/decreed holders argued by drawing attention of this Court to orders of the Supreme Court in some other cases whereby the Supreme Court dismissed challenge to the appeal of the High Court in RFA No.111/1997 by refusing to condone the delay, however, appellants/decreed holders can take no benefit of those orders of the Supreme Court dated 8.7.2011 and 13.5.2011 for various reasons. Before stating these reasons let me reproduce the orders of the Supreme Court dated 8.7.2011 and 13.5.2011 in SLP(C) Nos. 10474/2011 and 8456/2011, and which orders read as under:-

“Order dated 8.7.2011 in SLP(C) No.10474/2011

Upon hearing counsel the Court made the following

ORDER

There is a delay of 3351 days in filing this petition which is not satisfactorily explained.

Special leave petition is dismissed on the ground of delay.

We make it clear that the order of the High Court will not be a precedent having regard to the subsequent decision of this Court in **Delhi Development Authority Vs. Bali Ram Sharma & Ors., (2004) 6 SCC 533.**

Order dated 13.5.2011 in SLP (C) No.8456/2011

UPON hearing counsel the Court made the following

ORDER

This petition is directed against judgment dated 7.12.2000 by which the Division Bench of the Delhi High Court allowed the appeal filed by the respondent and fixed market value of the acquired land at Rs.345/- per sq yd.

The petitioner has also filed an application for condonation of 3662 days' delay in filing the special leave petition. In paragraph 4 of the application, the petitioner has given the following explanation for delay of almost ten years' delay:

“4. That the reasons for delay occurred in filing Special Leave Petition are as under:

- i) That the impugned judgment was passed by the Hon'ble High Court on 7.12.2000.
- ii) That on 27.1.2001 certified copy of Hon'ble High Court was receive.
- iii) That on 24.4.2001 processing of file for DLA opinion initiated.
- iv) That on 29.5.2001 opinion of DLA received.
- v) That on 12.7.2001 File/letter sent by LAC (East) for drafting SLP to Govt. Counsel.
- vi) That on 13.7.2001 letter/file received by the PA (Mrs. Dhingra) of Govt. Counsel (Sh.D.S. Mahara).
- vii) That on 16.8.2001 litigation Clerk directed to obtain draft SLP for further process.
- viii) That on 23.7.2009 fresh execution No.31/08 (LAC No.19/94) received from Sh. Gulshan Kumar, Hon'ble ADJ, Karkardooma Court received.
- ix) That on 19.8.2009 letter written to Addl. Govt. to provide status of SLP filed in RFA No.122/97. The same was done after enquiry from Hon'ble ADJ.
- x) That on 21.8.2009 reply of Additional Govt. Advocate received to the said case stating no record of proposed SLP available and the same was also checked by them through National Informatics Centre, Courts Information Division, no details pertaining to this proposed SLP was found.
- xi) That on 14.9.2009 letter to Addl. Government Counsel was written for providing status of SLP in other 17 cases to be provided by Addl. Govt. Advocate.
- xii) That on 2010 objection filed in the Hon'ble Court of Sh. S.K. Gupta, ADJ, Karkardooma Court for dismissing the said Execution in the Court of ADJ itself.
- xiii) That on Amended objection filed in the Hon'ble Court of Sh. S.K. Gupta, ADJ, Karkardooma Court.
- xiv) That on 15.4.2011 letter sent to Addl. Government for filing of SLP in the said case.
- xv) That on 2.5.2001 the file marked to panel advocate for drafting of application for condonation of delay.
- xvi) That on 2.5.2011 the panel advocate submitted the draft of Application for condonation of delay to the Central Agency Section.”

In our view, the petitioner has failed to make out case for condonation of delay because nothing has been said about the time gap of almost eight years between the obtaining of draft special leave petition in August, 2001 and further processing of the matter till 2009.

Even on merits, we are satisfied that the High Court did not commit any error by fixing the market value of the acquired land at the rate of Rs.345/- per sq yd. The respondent's land was acquired vide Notification dated 17.11.1980 issued under section 4 of the Land Acquisition Act, 1894, which was followed by declaration dated 29.9.1981 issued under section 6 of the Act. The Land Acquisition Officer passed award dated 31.3.1982 and fixed market value of the acquired land at Rs.8,500/- per bigha. On a reference made under section 18 of the Act, the Reference Court vide its order dated 24.12.1996 determined market value of the acquired land at the rate of Rs.76,550/- per bigha. The High Court, after due consideration of the material placed before it and the judgment of a co-ordinate Bench in "Ani Kumar Sharma and others versus Union of India" [(2000) 6 D.L.T.825], fixed market value of the acquired land at Rs.345/- per sq. yd. In our view, the reasons assigned by the High Court for revising market value of the acquired land are legally correct and the impugned judgment does not call for interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed on the ground of delay and also on merits.

The petitioner is directed to pay the balance amount, if any, to the respondent within a period of two months from today and submit a report this effect in the Registry of this Court."

11. It may also be noted that the learned counsel for the appellants/decreed holders sought to argue that the Supreme Court in its order dated 13.5.2011 has stated that the High Court has correctly fixed the rate at Rs.345/- per sq. yd., and therefore, the appellants/decreed holders are entitled to benefit of the compensation of Rs.345/- per sq. yd. i.e Rs.3,45,000/- per bigha in terms of the judgment dated 7.12.2000 in RFA No.111/1997.

12. In my opinion, the first reason for the appellants/decreed holders not getting any benefit of the orders of the Supreme Court dated 8.7.2011 in SLP(C) No.10474/2011 is because this order itself

states that the delay was of 3351 days in filing the SLP was not condoned, however, the Supreme Court made it very clear that the judgment of the High Court dated 10.1.2002 in RFA No.55/2001 will not be a precedent in view of the judgment of the Supreme Court in the case of ***Bali Ram Sharma (supra)***. Putting it in other words, the SLP(C) No.10474/2011 was only dismissed on the ground of delay but at the same time the Supreme Court reaffirmed the bindingness and applicability of the ratio of the judgment of the Supreme Court in the case of ***Bali Ram Sharma (supra)*** granting compensation only at Rs.76,550/- per bigha and not at Rs.3,45,000/- per bigha.

13. On the same aforesaid reasoning the order of the Supreme Court dated 13.5.2011 in SLP(C) No.8456/2011 is also liable to be distinguished as not applicable, and all the more so because the order dated 13.5.2011 does not refer to earlier binding decision of the Supreme Court in the case of ***Bali Ram Sharma (supra)*** dated 3.8.2004 and reported as ***(2004) 6 SCC 533***. No doubt the Supreme Court in the order dated 13.5.2011 in SLP(C) No.8456/2011 has stated that the reasons given by the High Court for fixing rate at Rs.345/- per sq. yd. cannot be faulted with, however, with utmost respect and humility it is stated that it is the settled law that a later co-ordinate Bench judgment of the Supreme Court cannot overrule or differ with

the earlier co-ordinate Bench judgment of the Supreme Court inasmuch as the judgment in the case of ***Bali Ram Sharma (supra)*** was given by the Division Bench of two Judges on 3.8.2004 and the subsequent order dated 13.5.2011 in SLP(C) No.8456/2011 was also of a Division Bench of two Judges of the Supreme Court and that too without noticing the judgment in the case of ***Bali Ram Sharma (supra)***.

14. In view of the aforesaid discussion, it is seen that present second execution petition which has been dismissed by the impugned order of the executing court dated 7.1.2017, was a misconceived execution petition inasmuch as appellants/deGREE holders were estopped from filing the second execution petition after having got disposed of the first execution petition on 7.4.2005 in the presence of their counsel and wherein it is duly recorded that the necessary vouchers have been issued i.e necessary payments have been made to the appellants/deGREE holders.

15. Dismissed.

C.M. No. 15750/2017 (exemption) in Ex.FA No. 8/2017

16. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No. 15751/2017 (condonation of delay)

17. For the reasons stated in the application, delay of 34 days in re-filing the appeal is condoned.

C.M. stands disposed of.

Ex.FA No.8/2017

18. This Execution First Appeal is against the impugned order of the executing court dated 17.1.2017 and in terms of the reasoning given while dismissing the EFA No. 9/2017, this EFA is also dismissed. This EFA is liable to be dismissed in fact for a stronger reason that there was no challenge by the Union of India as regards the case of the appellants/decreed holders in this case before the Supreme Court by filing an SLP, whereas in EFA No.9/2017 and SLP was in fact filed by the Union of India and which was dismissed.

19. This Execution First Appeal is also accordingly dismissed.

APRIL 26, 2017
Godara/Ne

VALMIKI J. MEHTA, J