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

% *Date of Judgment: 14th November, 2017*

+ W.P.(C) 4427/2016

TEJPAL

..... Petitioner

Through Mr.B.S. Maan, Mr.Vishal Maan,
Advocates.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through Mr. M.S. Gupta, Adv. for DDA.
Ms.Astha Tyagi, Adv. for L&B/LAC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. Counter affidavit filed by LAC is lying under objection. Counsel is requested to clear the objection and place the counter affidavit on record. Counter affidavit has been handed over in Court after the matter was passed over once. The same is taken on record.
2. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
3. This is a petition filed under Article 226 of Constitution of India by the petitioner seeking a direction that the acquisition proceedings in respect of the property bearing plot no.26-A, measuring 50 sq. yds. comprised in Khasra nos.624 & 625, situated in the revenue estate of village

Roshanpura, colony known as Shyam Vihar, Najafgarh, New Delhi (hereinafter referred to as the 'subject land'), to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (hereinafter referred to as 'New Act').

4. Mr. Maan, learned counsel for the petitioner submits that the acquisition proceedings with respect to land subject matter of this writ petition stand lapsed as neither compensation has been tendered nor possession taken over. Counsel relies on *Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.*, (2014) 3 SCC 183.
5. Learned counsel for LAC has opposed this petition, firstly, on the ground that the petitioner has no *locus standi* to file the present petition and secondly, no relief can be granted to the petitioner as the land vests in the Gaon Sabha. Reliance is placed on para 11 of the counter affidavit filed on behalf of LAC wherein it has been stated that possession of the land has not been taken over due to built up and secondly, since it vests in the Gaon Sabha, thus, there is no question of paying compensation. A counter affidavit has also been filed on behalf of Gaon Sabha wherein the issues raised in the petition with regard to decree passed under Section 81 of Delhi Land Reform Act, 1954, not being executed has not been controverted.
6. Mr. Maan, learned counsel for the petitioner submits that neither the actual physical possession of the land has been taken over nor compensation has been paid to the petitioner. Counsel further submits that the petitioner has impleaded Gaon Sabha as respondent no.4 as it is claimed by the Gaon Sabha that the subject land vests in the Gaon Sabha.

It is the case of the petitioner that section 4 notification was issued on 07.04.2006, section 6 notification was issued on 04.04.2007, pursuant to these notifications, an award bearing no.08/2008-09 was also made. As far as the objection raised that the land vests in Gaon Sabha and the petitioner's right to claim benefit of section 24 (2) of New Act is concerned, learned counsel for the petitioner submits that predecessor-in-interest of the petitioner was the recorded Bhumidar and was in actual physical cultivated possession of the subject land. It is submitted that after construction took place over the subject land, the Revenue Assistant initiated proceedings under section 81 of Delhi Land Reform Act, 1954 and thereafter, the subject land was vested in the Gaon Sabha. It is the case of the petitioner that despite the judgment and decree passed under section 81 of the Delhi Land Reform Act, 1954 by the then concerned Revenue Assistant, the Gaon Sabha in whose possession the subject land vested, never filed any execution proceedings nor executed the decree till date while the petitioner continues to remain in settled physical cultivating possession of the subject land. It is also the case of the petitioner that since the decree under section 81 of Delhi Land Reform Act, 1954 has not been executed within the period of limitation, the same has now become barred by law and the Gaon Sabha cannot be permitted to rely upon the same to claim any right in their favour. It is thus contended that the judgment and decree passed by the Revenue Assistant has become *non est* and, no right, title and interest was ever created in favour of the Gaon Sabha. Learned counsel has also drawn attention of this Court to the order dated 12.12.2007 passed by the Lt. Governor of Delhi wherein it has been stated that all the lands vested with Gaon Sabha

under section 81 of the Delhi Land Reform Act, 1954 where the actual physical possession is with the land owners, the same shall be treated as private land. The order passed by the Lt. Governor has also been placed on record. Another fact which is brought to the notice of the Court by learned counsel for the petitioner is that the entire area which falls in Shyam Vihar village Nazafgarh, Delhi has developed into an unauthorized colony known as Shyam Vihar, Deenpur, Goela Road having registration no.432 and in respect of the said unauthorized colony, a provisional certificate has been issued. Counsel submits that an identical issue had arisen before another Division Bench of this Court in the case of ***Sanjeev Solanki Vs. Delhi Development Authority and Ors, W.P. (C) 1999/2015, decided on 24.01.2017***, paragraph 5 reads as under:-

“5. While we have declared that the subject acquisition has lapsed, it is made clear that this would not amount to giving title to the petitioner or perfecting the petitioner’s title inasmuch as Mr.Jain has taken the plea in the counter-affidavit filed on behalf o the respondent no.2 that the Gaon Sabha has been shown as the recorded owner. This fact is disputed by the learned counsel for the petitioner. But, we are not entering into the controversy of title which may be sorted out elsewhere. Insofar as the acquisition is concerned, the same has lapsed because neither physical possession was taken over nor compensation was paid.”

7. Learned counsel for the petitioner submits that a similar view has also been expressed by this Court in the case of ***Parshotam Joshi vs. Govt. of NCT of Delhi & Ors., W.P. (C) 4255/2016, decided on 08.11.2017***.
8. We have heard learned counsel for the parties. Taking into consideration the fact that neither possession has been taken over nor compensation paid, the petitioner is entitled for a declaration that the acquisition

proceedings in respect of subject land stand lapsed. Keeping in view the objection raised that the Gaon Sabha has been shown as the recorded owner, which has been disputed by the counsel for the petitioner, we are not entering into this controversy of title and grant leave to the parties to resolve the same in an appropriate Court of jurisdiction. We also make it clear that since neither the physical possession was taken over nor compensation paid, therefore, the acquisition proceedings with respect to subject land stand lapsed.

9. In view of above, writ petition stands disposed of.

CM No.18500/2016

10. The interim order dated 17.05.2016 is confirmed.

11. Application stands disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 14, 2017/ck