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

% *Date of Judgment: 27th October, 2017*

+ **W.P. (C.) No.10829/2015**

JANGUMAL GOYAL & ANR

..... Petitioners

Through Mr. Vikas Aggarwal with Mr. Karan
Arora, Advocates

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through Ms. Jyoti Tyagi, Advocate for Mr.
Yeeshu Jain, Standing Counsel for
L&B/LAC.
Mr. Sanjeev Sabharwa, Standing
Counsel for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V.KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. Rule DB.
2. With the consent of the parties, the writ petition is set down for final disposal.
3. Counter affidavit has been filed by the DDA. No counter affidavit has been filed by the LAC. However, Ms. Tyagi submits that original records have been called in Court.
4. This is a petition under Article 226 of the Constitution of India filed by the petitioners. The prayer made in this writ petition reads as under:

“1. Issue an appropriate writ, order or directions declaring the entire acquisition proceedings in respect of the rear portion of Plot no.27, bearing Khasra no.410/219-

267/2, Block no.6, admeasuring 2 bighas and 8 biswas situated at Dilshad Garden City, Tahirpur Estate, G.T. Road, New Delhi, initiated vide notification bearing no.F.15(245)/60-LSG/L&H dated 24.10.1961 issued under Sections 4, 6 and 9 of the Land Acquisition Act, 1894 and all subsequent proceedings of the process of taking over the possession of the land in question be declared as null and void;

2. Issue an appropriate writ, order or directions thereby appropriate directions may be issued to the respondents for releasing the rear portion of Plot no.27, bearing Khasra no.410/219-267/2, Block no.6, admeasuring 2 bighas and 8 biswas situated at Dilshad Garden City, Tahirpur Estate, G.T. Road, New Delhi and rectify the revenue records showing the land in question as denotified and the possession of the same may be handed over to the petitioners herein;
 3. Pass any further order/s that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."
5. Before the rival submissions of the parties can be noticed, we deem it appropriate to notice the relevant facts, which have given rise to the filing of the present writ petition. As per the petition, the petitioners had purchased from the recorded owner a Plot no.27, situated in Khasra no.410/219-267/2 in Block no.6 plot no.3, admeasuring 2 bighas and 8 biswas situated in the Dilshad Garden City, Tahirpur Estate, G.T. Road, New Delhi(hereinafter referred to as the 'land in question'). It is also the case of the petitioners that Shri Sanjay Garg and Shri Rajiv Garg(Garg brothers) are the other recorded co-owners, who had sold the land in question to the petitioners vide Agreement to Sell, GPA and Will all dated 10.06.2004. The petitioners claim to

have become owners of the land in question by virtue of the documents executed by Garg brothers in their favour.

6. Mr. Aggarwal, learned counsel for the petitioners submits that a Section 4 notification was issued with respect to the land in question in the year 1961, Section 6 notification was issued in the year 1968 and thereafter, an Award was published in the year 1983. The counsel for the petitioners has strongly urged before this Court that the acquisition proceedings relating to Khasra no. 410/219-267/1 which part of the land was in possession of Garg brothers, however, the Garg brothers connived with the officials of the respondents and in the subsequent records showed that acquisition proceedings pertained to Khasra no.410/219/267/2. It is contended that even at the time when the possession was to be handed over to the petitioners, in connivance with the officials of the respondents instead of taking over possession of the land which was actually acquired being Khasra no.410/219-267/1, the possession was taken over by the DDA of Khasra no.410/219-267/2. It is submitted by the learned counsel for the petitioners that based on the Notification issued under Section 9 of the Land Acquisition Act, 1894 the land has been described as Khasra no.410/219-267/1. Mr. Aggarwal, learned counsel for the petitioners submits that between the seller and the purchaser, the parties were *ad idem* that the rear portion of the land bearing Khasra no.410/219/267/2 was sold, which was not subject matter of acquisition and thus, today the acquisition qua the rear portion is liable to be quashed in view of the mis-description in the subsequent proceedings including the award.

7. Learned counsel for the LAC submits that no doubt Section 9 notification describes the land as Khasra no.410/219/267/1, but the Award gives the clear description of the land. It is submitted that the Section 4 notification refers to the entire village, while Section 6 notification also refers to the entire Khasra and the Award makes it abundantly clear that the land sought to be acquired relates to Khasra no. 410/219-267/2. She further submits that the petitioners have all along been aware since the date the land was purchased by them that the said land was a subject matter of acquisition. The petitioners were aware that the Garg brothers had filed first writ petition in the year 1983 being W.P.(C).2287/1983 and the second writ petition was filed in the year 2012 being W.P.(C).6210/2012. She submits that on account of stay granted on 08.05.1977 pursuant to the writ petition filed by the Garg brothers, physical possession was taken over by the DDA on 30.06.1983 and thereafter post the dismissal of the writ petition, the DDA constructed a boundary wall in the year 2012.
8. Ms. Tyagi and Mr. Sabharwal submits that till the year 2012, the present petitioners knowing very well that the land purchased by them was subject matter of acquisition, possession was taken over, they did not agitate their rights in any forum. It is submitted that the petitioners approached this Court in the year 2015 and the petitioners have failed to give any explanation for the delay and laches in filing the petition. Counsels further submits that if there was any grievance of the petitioners, the grievance would be against the Garg brothers and no relief is available to the present petitioners in view of the Award which has correctly described the land and which has been acquired

and possession taken over. Additionally, Ms. Tyagi points out that the challenge to the acquisition by the Garg brothers of the entire land has attained finality, which is evident upon reading the final order passed in W.P.(C).6210/2012, when order regarding release of compensation to Rajiv Garg was made by another Division Bench of this Court.

9. We have heard the learned counsel for the parties and considered their rival submissions. The basic facts are not in dispute except that learned counsel for the petitioners has urged that Section 9 Notification relates to the land sought to be acquired as Khasra no.410/219-267/1, however, in all the subsequent proceedings refer to the impugned land being Khasra no.410/219-267/2. We find no explanation as to why the present petitioners did not approach this Court at any point of time prior to the year 2015, in case, as submitted by learned counsel for the petitioners, a fraud was played upon the petitioners by the erstwhile owner in connivance with the officials of the respondents. We find it very strange and unusual that in the set of documents which have been placed on record on the basis of which the present petitioners claim ownership, the exact Khasra number has not been mentioned and only the Khasra no.410 has been mentioned in the preamble of the Agreement to Sell at page 1 and subsequently. In all the documents, including the POA, the precise description as sought to be urged today has not been mentioned. There is no explanation for the same. In case a fraud has been played by the erstwhile sellers upon the petitioners, the petitioners should have sought appropriate remedy at the earliest opportunity available and not waited for more than a decade. Even, at this stage, the petitioners

have not disclosed as to whether any action has been taken by the petitioners against the Garg brothers.

10. At this stage, learned counsel for the petitioners submits that since the disputed questions of facts arise in the present writ petition, he does not press the same and submits that he would approach the Court of appropriate jurisdiction to agitate his rights, including for grant of compensation.
11. Accordingly, the writ petition is dismissed in above terms.

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12. The application stands disposed of in view of the orders passed in the writ petition.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

OCTOBER 27, 2017

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