

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: December 21, 2018

+ W.P.(C) 3049/2014, CM No. 6380/2014

B S TOLANI

..... Petitioner

Through: Mr. Rajesh Rawal, Adv.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. B. Mahapatra, Adv. for R-1 & 3
Ms. Shobhana Takiar, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:

“That in view of the above, it is therefore most respectfully prayed that this Hon’ble Court may be pleased to: -

Issue a Writ, Order or Direction in the nature of Certiorari thereby Quashing the Award passed by the Respondent under Section 11 of the Land Acquisition Act, 1894 bearing no.05/2013-2014 dated 27.12.2013 whereby the Respondent wants to acquire the land of the Petitioner admeasuring 34 Bighas 18 Biswas (35,172 Sq. Yards) in Mehrauli.

Issue a Writ, Order or Direction in the nature of

Certiorari thereby Quashing all other related notifications under Section 4 dated 21.07.2011 and Section 6 dated 19.07.2012 under the Land Acquisition Act, 1894 and the Alleged Notice allegedly sent to the Petitioner under Section 9 and Section 10 of the Land Acquisition Act, 1894 dated 14/11/2013;

Issue of a Writ, Order or Direction in the Nature of Mandamus thereby directing the Respondents not to interfere with the peaceful possession of the Petitioner in the land of the Petitioner admeasuring 34 Bighas 18 Biswas in Mehrauli.

Issue such other writ, order or a direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and

Also award costs of the present proceedings in favour of the petitioner and against the respondent”

2. It is the case of the petitioner that he is the owner of the Land at Village – Mehrauli, touching DDA Residential Colony, Vasant Kunj, Sector-A, Pocket-C, alongside Mehrauli-Mahipal Road, New Delhi-110030, area measuring 34 Bighas 18 Biswas bearing Khasra Nos. 1303 (0-13), 1304 (0-18), 1305 (0-10), 1306 (18), 1307 (0-18), 1309 (0-18), 1310 (1-14), 1311 (1-10), 1312 (1-10), 1313 (017), 1314 (0-17), 1315 (4-16), 1316 (4-9), 1317 (2-6), 1329 (4-8), 1331 (1-8), 1332 (0-17), 1333 (1-18), 1336 (0-5), 1472 (0-10), 1473 (0-14), 2855 / 1470 (02), 1329 (1-13) sold by Government of India as freehold land under sale deed dated 13.09.1966 and respondent DDA had earlier in the year 1983 attempted to acquire the land of the petitioner through Land Acquisition Award dated January 17, 1983. However, this Court vide

order dated September 23, 1986 in W.P.(C) 753/1983 had quashed the said Award and held that the land of the petitioner was an evacuee land sold to the petitioner by the Govt. of India and therefore could not be a subject matter of acquisition proceedings.

3. Despite the aforesaid order of this court and various representations by the petitioner, respondent / DDA retained the subject land in the name of DDA / Sarkari in Mehrauli Tehsildar records and DDA Land Management Department records and DDA Tehsildar Records for over 30 years, due to which the petitioner could not sell or develop the land even though the physical possession of the said land remained with the petitioner. It is stated that on July 21, 2011 respondent no.1 got issued Notification No. F.9(4)/08/L&B/LA/5136 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) disclosing therein their intention to acquire the land measuring 44 Bighas, which included the land of the petitioner. Within 30 days of getting knowledge of the said Notification under Section 4 of the Act, the petitioner filed an objection petition before the LAC, Delhi and prayed for quashing and setting aside of the notice. The petitioner requested and was granted a personal hearing before the respondent no.3 on November 21, 2011 at 3 PM.

4. It is stated that the petitioner reached the office of respondent no.3 at the pointed hour, however, the respondent remained unavailable for the said

personal hearing as required under Section 5A of the Act. The respondent no.3 however assured the petitioner on telephone that a personal hearing would be given to the petitioner in accordance with Section 5A of the Act. The petitioner therefore filed written objections at the office of respondent no.3 on the same day, i.e., November, 21, 2011. The said letter of objections stated to have clearly indicated the petitioner's address at Mumbai. Thereafter, the petitioner had made repeated representations to the respondent in writing for cancellation of notice under Section 4 of the Act while also requesting for a personal hearing under Section 5A of the Act. The petitioner also submitted a review application to the Hon'ble Lt. Governor of Delhi vide letter dated August 18, 2011 requesting for cancellation of the said notification. The said application was forwarded by the Lt. Governor to Secretary, L&B Department for consideration, however no action was taken. On January 7, 2012, the petitioner also filed an application under Section 48(1) of the Act to the respondent no.1 and kept following up for action to be taken through several representations. It is stated that the respondent sent a belated letter dated May 31, 2012 to the petitioner stating therein that the said application was not addressed to the Hon'ble Lt. Governor and therefore could not be considered.

5. It is stated that on May 16, 2012, respondent no.2 is stated to have prepared and sent a recommendation report in favour of the intended land

acquisition to respondent no.1 being report no. ADM/LAC/(S)/2012/7672 stating falsely therein the inability of the petitioner to meet respondent no.3 on account of being a resident of Mumbai. Subsequently, notification no. F9(4)08/L&B/LA/6956 dated July 19, 2012 under Section 6 of the Act was issued confirming the intention to acquire the land of the petitioner for the purpose of “Planned Development of Delhi” at Mehrauli.

6. In accordance with Scheme of the Act of 1894, notice under Sections 9 and 10 of the Act dated November 14, 2013 was sent to the petitioner stating therein that the respondent intended to take possession of the said land and therefore called upon the petitioner to show any interest in land or claims to compensation for such interest in land as notified in the notification dated July 19, 2012 under Section 6 of the Act. The notice further informed the petitioner to be present at the office of respondent no.3 on November 30, 2013 at 3 PM for personal hearing. It is submitted that the notice under Sections 9 and 10 of the Act dated November 14, 2013 was sent on a false and fictitious Delhi address of the petitioner and the same was never received by him.

7. It is averred that the respondent no.3 without affording a just and fair opportunity to the petitioner to present his objections and claim for compensation and determination of right current market value of his land has passed the impugned award dated December 27, 2013 being NO. 05/2013-14

and the same is arbitrary, illegal and null and void.

8. It is the case of the petitioner that the Notification under Section 6 of the Act is invalid and bad in law as the same was not issued within one year from the issuance of notification under Section 4 of the Act. The notification under Section 4 was issued on July 21, 2011, however Section 6 notification was published in the Govt. Gazette only on July 27, 2012. The same is stated to have been confirmed by the Govt. of India Press Manager in his letter dated December 14, 2012 obtained under RTI by the petitioner.

9. It is the case of the petitioner that according to procedures formulated by Govt. of NCT of Delhi under Provisions of the Land Acquisition Act, 1894, the proposal for acquisition of land for furnishing the draft notification under the provisions of the Act of 1894, after conducting the joint survey of the land proposed to be acquired, is first forwarded by DDA or any other Govt. Department to the concerned Land Acquisition Collector. In the present case, however, no joint survey of the subject land is stated to have been carried out, nor was any land demarcation or measurement carried out. According to the petitioner the respondent no.2 neither had financial sanction nor any approval of the Scheme / Project by higher authorities. No formal proposal for land acquisition by way of an application was submitted by respondent no.2 / DDA, but instead letters dated January 22, 2007, August 18, 2008 and February 22, 2009 were sent to respondent no.1 requesting to

acquire 118 bighas 18 biswas of land for the unspecified public purpose of “*Planned Development of Delhi*” without having any actual or specific Scheme / Project in place.

10. It is the case of the petitioner that respondent no.2 / DDA without any basis issued two subsequent letters dated March 3, 2011 and June 22, 2011 to respondent no.1 to issue notifications under Sections 4, 6 and 17(1) of the Act of 1894 for the subject land on urgent / priority basis citing the reasons as compliance in cases pending against the respondent / DDA before this Court. It is averred that on the basis of the naked discrimination names of several land owners were deleted from the original list of 118 bighas of total land to be acquired and brought down to 44 bighas which also included the land of the petitioner. It is his case that no explanation was communicated to him for such action and the same is therefore violative of the Right to Equality guaranteed by the Constitution.

11. It is the case of the petitioner that the respondent no.2 / DDA had failed to deposit the required 80% mandatory cash deposit of the estimated cost of acquisition with the respondent no.3 as is required by the procedure as provided on the website of Govt. of NCT of Delhi for land acquisition read with Section 6 of the Act of 1894. In terms of the above stated procedure, the demand to deposit the said 80% of the estimated cost of acquisition was raised by respondent no.3 in its letter dated June 30, 2011 addressed to

respondent no.1 with a copy marked to respondent no.2 / DDA. It is therefore stated that since respondent / DDA failed to deposit the said amount, respondent no.1 had no authority to issue the notification under Section 6 of the Act of 1894.

12. It is averred that as per Policy of Govt. of NCT of Delhi / respondent no.1, no land within 50 meters from village abadi could be acquired. It is stated that the respondents failed to consider that the land of the petitioner touches DDA residential flats, which is less than 50 meters away.

13. It is further averred that the petitioner's application for de-notification dated January 7, 2012 under Section 48 (1) of the Act was required to be addressed and dealt with by the De-notification Committee and then forwarded to the Hon'ble Lt. Governor. By not considering the said application of the petitioner and simply rejecting it outright without giving a personal hearing to the petitioner, the respondents are stated to have violated their own policy and procedures.

14. It is the case of the petitioner that the respondent no.3 has fixed the fair market value of petitioner's land at about Rs.100 per sq. ft. shown in the impugned award at Rs.53 Lacs per acre, whereas the DDA flats in the adjacent Vasant Kunj colony touching the petitioner's land are selling at about Rs.25,000/- per sq. ft.

15. It is further the petitioner's case that the impugned award dated

December 27, 2013 was passed only two working days before January 1, 2014, when the Land Acquisition Act, 2013 came into force, by which time the respondents had neither taken physical possession of the petitioner's land nor paid any compensation to the petitioner. It is his case that the subject land has always been in his actual physical possession being walled and fenced off and being occupied by the petitioner's staff and several security guards and supervisor.

16. The respondent nos. 1 and 3 have jointly filed their counter-affidavit wherein they have challenged the maintainability of the present petition stating that the award had already been pronounced on December 27, 2013 and therefore, the proceedings so far as the land acquisition is concerned, having been completed in all respects under the old Act cannot now be challenged. It is stated that the possession of the subject land had already been taken over by the department under Section 16 of the Act and handed over to the beneficiary. Reliance is placed on the Kabza Karwahai report dated December 30, 2013.

17. It is the case of respondent nos. 1 and 3 that the petitioner, despite having information about a date of hearing under Section 5 A of the Act could not attend the same on account of his residing in Mumbai. It is stated that the petitioner therefore filed written objections vide letter dated November 21, 2011. The written objections as raised by the petitioner are stated to have

been taken into consideration by respondent no.3 while preparing the report for the purpose of acquisition of land in question. It is further stated that the notice under Sections 9 and 10 of the Act were duly issued and served on the petitioner.

18. It is averred that the notification under Section 6 of the Act was actually issued on July 19, 2012 and only published in the Gazette on July 27, 2012. The same is, therefore, stated to have been issued within one year from the date of issuance of the notification under Section 4 of the Act on July 21, 2012. It is further stated that in any case Annexure P-3 relied upon by the petitioner is of newspaper dated July 29, 2011 and therefore the Notification under Section 6 of the Act would still lie within one year from the said date if published on July 27, 2012.

19. It is the case of the respondents that the petitioner's application for de-notification under Section 48 (1) of the Act was duly considered by the Lt. Governor and ultimately rejected. It is further stated that the petitioner's grievance with regard to amount of compensation can be agitated before the appropriate authority.

20. It is the respondents' case that the compensation of the acquired land in accordance with prevalent rate has already been calculated, and since there were certain litigations pending with regard to title and apportionment of the land, the compensation would be subject to outcome of adjudication under

Section 30 and 31 of the Act. It is therefore stated that the petitioner was in no way prejudiced by the procedure adopted by the respondents nor can it be said that the impugned award dated December 27, 2013 was passed without following due procedure of law.

21. Respondents in their additional affidavit filed on August 30, 2016 stated that two e-mails were sent from the office of LAC on February 7, 2012 and February 8, 2012 requiring the petitioner to appear before him for hearing under Section 5A of the Act. The same were received by the petitioner, who vide letter dated February 7, 2012 requested the LAC to consider his submissions dated November 21, 2011. The said letter of the petitioner dated February 7, 2012 further read *“today I received a phone call in my office in Bombay while I was away, from a person who claimed that he is SDM calling from New Delhi and wants Mr. Tolani to be present on February 10, 2012 (Friday) at 3 PM for personal hearing. Regrettably, he refused to give his landline telephone no. and any other details”*. It is therefore stated that the petitioner has therefore denied himself the opportunity of being heard and that the enquiry under Section 5A of the Act is not vitiated by error of law.

22. Petitioner in his rejoinder stated that the impugned award and notifications under Section 4, 6, 9 and 11 of the Act have been challenged not just under Sections 9 and 11 of the Act but under several other provisions of the Act. It is further stated that there is no bar under the Act from challenging

the notifications after the passing of the Award.

23. It is further stated that the Kabza Karwahai report is a manufactured and self-serving document and that the possession of the land still remains with the petitioner. The petitioner further stated that although the Kabza Karwahai report states the possession of the said land had been handed over to one Mr. Khemchand (Patwari, L&B), it does not however, mention who handed over the possession of the said land. It is stated that the petitioner resides in Mumbai and therefore for the possession to be handed over, the respondent would have to fix a date and time, for the petitioner to be present at his land to hand over the possession to respondent / DDA. No such notice was ever received by the petitioner and the Kabza Karwahai report falsely states that the land comprising of 44 bighas and 10 biswas was demarcated on the spot by area Patwari. The petitioner's land is an enclosed land having boundary walls and steel wire fences and has several security guards and other staff present at the said land at all times. No demarcation of land and no measurements were taken on December 30, 2013. In the absence of several workmen and tools the same could also not have been carried out by the officers of the respondent. The petitioner relies on affidavit dated February 20, 2015 of Sh. Sohrab Ansari owner of the Security Agency engaged by the petitioner to state that on December 30, 2013 no outsider visited the petitioner's land and the same remains in possession of the

petitioner and his staff till date. The petitioner further relies on various bills from the year 2013 to 2015 evidencing payments made to the Security Agency.

24. It is stated that the subject land is guarded by security personnel, employed by the petitioner, and that no one could enter the land without his permission. The petitioner is stated to have additionally employed staff member (caretaker) to take care of the said land who is also residing in staff quarters (dwelling house) at the said land with his whole family. It is stated that the order of *status quo* passed by this Court on May 16, 2014 on the representation of the petitioner that he was still in possession of the subject land is still in operation and the petitioner therefore continues to be in continuous uninterrupted possession of the said land till date.

25. The petitioner denies the respondents' contention that he failed to attend the proceedings under Section 5A of the Act in view of the fact that he resided in Mumbai. The petitioner is stated to have reached the office of respondent no.3 at the given time on November 21, 2011. The respondent no.3 being unavailable for hearing, the petitioner filed written objections under Section 5A of the Act on the same date on the assurance that a personal hearing would be granted later. Subsequently, the petitioner visited Joint Secretary and Deputy Secretary, L&B Department twice requesting the LAC to be directed to give a personal hearing to him. It is pointed out that the

respondent LAC has failed to file / produce any proof of serving notice on the petitioner after respondent LAC failed to give hearing on November 21, 2011 whereas the petitioner has been repeatedly knocking at the door of respondent LAC for personal hearing under Section 5A of the Act.

26. It is averred that the impugned award dated December 27, 2013 is stated to have been signed by LAC (East), Delhi without application of mind and having no jurisdiction. The same is stated to have been within the jurisdiction of LAC (South).

27. It is stated that the Hon'ble Lt. Governor of Delhi never took any decision on the de-notification application filed by the petitioner and the same had simply been forwarded to Vice-Chairman, DDA for his examination and comments. The petitioner relies on RTI reply dated April 4, 2012 in support of the same. Further vide RTI reply dated March 11, 2015, the said application is stated to have been forwarded to the Office of DDA and Department of Land and Building for information. Further RTI reply dated March 27, 2015, the Hon'ble Lt. Governor is stated to have categorically denied rejecting the petitioner's application for de-notification. It is therefore stated that the impugned notification under Section 6 of the Act and the consequent award have been passed without due consideration of the de-notification application of the petitioner which is violative of the procedures in place.

28. It is the case of the petitioner that he is the sole and single owner of the subject land and has been in possession of the same since 1960 when the said land was sold to him directly by the Govt. of India. It is stated that there is no dispute or litigation pending before any Court as regards title.

29. In his additional rejoinder the petitioner has stated that the e-mails dated February 7, 2012 and February 8, 2012 were written by Mr. Sanjeet Sangwan, however, nothing was disclosed / explained as to his designation and authority to send such e-mails nor was it proved that the said e-mails were official communications from the concerned LAC.

30. The petitioner has further pointed out the last paragraph of his letter dated February 7, 2012, wherein it is categorically stated that *“if in spite of above you decide to go against above submissions, please be kind to confirm fixed time and date for personal hearing which will allow few days to enable my legal counsel to adjust his programme to travel with me to Delhi”*. It is stated that the said letter was never responded to nor was any personal hearing given on February 10, 2012. It is further stated that the petitioner had again written to respondent no.3 vide letter dated July 5, 2012 wherein reference was made to the letter dated February 7, 2012 and the failed hearing of November 21, 2011. Still, however, no response or hearing from the respondents was forthcoming.

31. Respondent / DDA in its counter-affidavit has stated that the impugned

award having been passed and the possession being taken over under Section 16 of the Act on December 30, 2013, the subject land now vests in State free from all encumbrances. The acquisition is stated to have been for the Planned Development of Delhi namely "*Development of Vasant Kunj Residential Scheme*". It is stated that the notification dated July 21, 2011 under Section 4 of the Act was issued at request of the respondent DDA.

32. It is further stated that the land in question was jointly surveyed by Land and Building Department and LAC with DDA vide Survey Report dated October 27, 2010. The land is stated to be lying vacant and being maintained by Horticulture Department of DDA. It is averred that after the Declaration under Section 6 of the Act was issued, the award was declared on December 27, 2013, possession taken was over on December 30, 2013 and compensation duly paid. In view of these facts, it is stated that the acquisition has become final.

33. It is averred that there is no dispute that the purpose of acquisition is a public purpose supported with a plan of the land acquired. The respondent is stated to have a complete, comprehensive and detailed Scheme or Plan as to the manner in which they are to develop the said land and the actual use to which it is proposed to be put to. It is further stated that the prices of the land prevailing in the areas which have been developed much earlier cannot be equated with those of undeveloped agricultural land. In view of the fact that

major portion of the land in the area has been utilized for allotment to schemes of DDA, i.e., LIG / MIG / EWS, there is no reason to exclude the land of the petitioner from acquisition.

34. It is the case of the respondent / DDA that the land in question has been acquired by following the due of process of law and the same now vests in State. The petitioner therefore has no right, title or interest in the land. The land has been placed at disposal of the DDA and the impugned notifications and award cannot now be challenged. It is stated that in light of aforesaid facts, there is no question of correcting the revenue records in favour of the petitioner.

35. In his rejoinder to the counter-affidavit filed by respondent / DDA, petitioner has stated that the approval for notification under Section 4 of the Act by the Hon'ble Lt. Governor has been obtained by misrepresenting facts inasmuch as the respondent no.2 had described the said land as heritage land (historical-allowing no development) and also classifying it as Forest Land (Ridge Land), which is to be developed by Forest Department and not DDA. It is stated that all the area in Vasant Kunj, Sector-A, Pocket-C was converted into residential area and Master Plan Delhi – 2021 shows the petitioner's land as being residential. It is further stated that the petitioner's representation for quashing of notification under Section 4 of the Act could not reach its logical conclusion on account of the fact that the respondent never furnished its

comments in that regard for perusal of the Hon'ble Lt. Governor.

36. It is averred that Vasant Kunj Residential Scheme, Sector-A, Pocket-C, where the petitioner's land is located was completed long ago and the residential colony was handed over more than 15 years ago to "Vasant Kunj Residents Welfare Association" and the said Scheme was completed, DDA handed over all the roads and utilities to Delhi Municipal Corporation. The said scheme being completed long ago, the respondent / DDA is no more incharge. There has also been no amendment or change of the end user in MPD-2021.

37. The petitioner further stated that the respondent / DDA never took actual physical possession of the subject land in 1983 and the same is also not supported by any documentary evidence. Similarly, actual physical possession of the subject land was again not taken on December 30, 2013 as no-one ever visited the petitioner's land. No maintenance, no planting of flowers, lawn or any other activity was ever carried out by the Department of Horticulture in the petitioner's land. The petitioner reiterates that several Security Guards and other staff are available on his land round the clock and that no-one is allowed to enter without permission. It is also categorically denied that the petitioner's land was jointly surveyed by L&B, LAC and DDA on October 27, 2010 or that the land is lying vacant and being maintained by Horticulture Department.

38. It is averred that compensation was never paid to the petitioner, nor has the respondent placed any evidence on record to substantiate its stand that the amount has already been paid. It is stated that the respondent had also not deposited 80% of the estimated cost of acquisition as demanded by LAC through repeated reminders prior to issuance of notification under Section 6 of the Act. It is further stated that the actual intended final usage of the subject land is still not clear.

39. It is the case of the petitioner that he was not granted a hearing under Section 5A of the Act which is mandatory in nature and non-compliance of which would be fatal to the entire acquisition proceedings. The report of the LAC dated May 16, 2012 is the result of non-application of mind and non-consideration of submissions made on behalf of the land owners. The said report is stated to be cryptic and does not deal with the petitioner's objections substantively. The petitioner claims to have been deprived of his valuable rights with the report being rendered in violation of principles of natural justice.

40. The petitioner has denied the respondent's stand that there is no need for correcting the revenue records in favour of the petitioner. It is stated that the respondent DDA through Tehsildar has falsified Govt. records of ownership by showing the petitioner land as DDA property for the past 30 years. The same has resulted in the petitioner not being able to fully enjoy his

land or develop it accordingly. The error has remained despite several representations to DDA and to the Tehsildar to correct the records of ownership.

Submissions.

41. Mr. Rajesh Rawal, learned counsel appearing for the petitioner in his submissions stated that the petitioner had purchased the subject property vide Sale Deed dated September 30, 1966. According to him, earlier also the subject property was sought to be acquired. However, the said acquisition was quashed by this court vide order September 23, 1996 in W.P.(C) 753/1983 on the ground that the subject property was a evacuee land and could not be the subject matter of acquisition proceedings.

42. It was the submission of Mr. Rawal that the respondent nos. 1 and 3 again sought to acquire the subject land of 118 Bighas and 18 Biswas of land Village – Mehrauli and the land was alleged to fall within Mehrauli Heritage Zone and Ridge / regional park. He by drawing our attention to a letter dated June 22, 2011 submitted that a contempt petition was filed by Sh. Mahender Gupta for non compliance of order dated February 11, 2011, whereby this court had directed to restore back the possession to him of his land. Accordingly, a notification was issued under Section 4 of the Act of 1894 on priority basis so as to avoid facing the contempt proceedings as stated in the said letter. A section 4 notification was issued to acquire the land of Sh.

Mahender Gupta and the subject property as well. He stated that there was no public purpose and the acquisition proceedings were initiated only to avoid contempt proceedings. He also stated that in terms of Page 118 of the paper book the acquisition proceedings were confined to aforesaid two lands of Sh. Mahender Gupta and the petitioner. The same is arbitrary, discriminatory and without any basis, whereas initial proposal was to acquire 118 Bighas and 18 Biswas of land.

43. It was the submission of Mr. Rawal that the petitioner was in receipt of notice dated October 5, 2011 for personal hearing to be held on October 17, 2011 and the said notice was received by the petitioner only on October 17, 2017 which allowed no time to the petitioner who is based at Mumbai to travel to Delhi to attend the said hearing. He submitted that thereafter petitioner repeatedly requested the respondents to give personal hearing. The date of personal hearing was fixed on November 21, 2011 at 3 PM and this date was fixed on telephone and no notice as per the Act of 1894 was issued to the petitioner for the said hearing. The petitioner along with his local Advocate travelled from Mumbai to Delhi to attend the hearing on November 21, 2011, however, the learned Officer was not available and the hearing did not take place. He stated, the petitioner submitted his written submissions on November 21, 2011, wherein the detailed submissions were made against the proposed acquisition and the aforesaid facts of failed hearing were narrated

therein as well.

44. He argued that on February 7, 2012, telephone call was received in the Mumbai office of the petitioner while the petitioner was not there, from a person who claimed to be SDM calling from New Delhi, and wanted the petitioner to be present on February 10, 2012 at 3 PM for personal hearing. However, he refused to give his landline telephone number and other details. Immediately petitioner wrote a letter dated February 7, 2012 narrating the above facts and also the fact of failed hearing of November 21, 2011 and accordingly expressed his apprehension that in view of the aforesaid scenario, the petitioner was not aware whether the telephonic appointment / date of personal hearing on February 10, 2012 was authentic and had requested for personal hearing, which would enable the petitioner to make travel arrangements to Delhi along with his Counsel from Mumbai. He further submitted that in the meantime, the submission of the petitioner narrated in the said letter may be considered and if the same did not find favour then it was requested that personal hearing may kindly be fixed by formal notice and sufficient time to be given to the petitioner to make travel arrangements to Delhi along with his Counsel. However, in this regard, no response was received from the respondent no.3. Mr. Rawal would submit that without giving mandatory hearing to the petitioner, respondents submitted report under Section 5A of the Act of 1894 on May 16, 2012. He has drawn our

attention to Page 98 to contend that the petitioner had taken few objections whereas the Land Acquisition Collector by non speaking order and without application of mind concluded that in view of larger public interest the objectors' prayers for excluding their land is not acceptable and recommended acquisition accordingly. He also referred to e-mails dated February 7, 2012 and February 8, 2012 from Mr. Sanjeet Sangwan, claiming to be writing on behalf of LAC as produced by the respondents, but the same did not disclose / explain his designation or authority to send the said mails. It was also not clear whether such mails constituted official communication on behalf of LAC as the same were not sent from designated e-mail ID of the Government Department of LAC. He alleges that the said copy of mails produced by the respondents is only a cut paste of two alleged e-mails. From perusal of the said documents it is found that one of the document is of February 18, 2012 being a Saturday and non-working and time stamped as 8.53 AM which is well before the official working hours of respondent no.3.

45. He argued that the mandatory hearing under Section 5A of the Act have not been granted to the petitioner and on that account alone the acquisition proceedings need to be set aside. He also pleaded that the report under Section 5A was absolutely vague among other as to when and how the alleged next date was fixed and communicated to the petitioner; when and how the petitioner has expressed his alleged inability to the said alleged hearing as he

resides in Mumbai. According to Mr. Rawal, earlier also the petitioner had come down from Mumbai to New Delhi to attend the hearing fixed on November 21, 2011 which hearing, in fact, failed and there was no cause or reason for the petitioner not to attend the hearing as the same is the only opportunity available to the petitioner to convince the respondents that his land should be excluded from the acquisition, as proposed.

46. According to Mr. Rawal, the objector has to be given an opportunity of being heard in person or by any person authorized by him in his behalf and that non-grant of such personal hearing vitiates the acquisition proceedings. Without prejudice, it is also submission that consideration of the objections of the petitioner / the objector without giving opportunity of being heard in terms of Section 5A of the Act, 1894, still cannot be considered as compliance of mandatory provisions of Section 5A of the Act., 1894 and in the absence of such personal hearing, the acquisition proceedings needs to be set aside. He further stated that the petitioner had written a letter dated July 5, 2012 which was duly received by the respondents pointing out that the aforesaid letter dated February 7, 2012 was written for grant of personal hearing, however, no hearing thereafter was accorded to the petitioner and the petitioner had reasons to believe that the acquisition proceedings have been dropped. He lays stress on the fact that no response to this letter was received from the respondent. On this aspect of the matter, Mr. Rawal relied upon the following

judgments of the Supreme Court:

Lajja Ram v. Union Territory, Chandigarh 2013 (11) SCC 235.

Kamal Trading v. State of West Bengal, 2012 (2) SCC 25

Raghubir Singh Sehrawat v. State of Haryana 2012 (1) SCC 792

Gojer Borthers. V. State of west of Bengal 2013 (16) SC 660

47. Mr. Rawal submitted that notification under Section 6 of the Act dated July 19, 2012 was issued. At the time of hearing, it was argued that Section 6 requires that, prior to issue of notification there under there has to be application of mind after considering the report under Section 5A that particular land is needed for public purpose and none of the aforesaid requirements were complied within the instant case, as it is apparent from the notification issued under Section 6 of the Act, the contents of which are mere reproduction of notification issued under Section 4 of the Act and the same does not even refer to report issued under Section 5A of the Act. He stated that thereafter, the alleged notice under Section 9 and 10 of the Act of 1894 dated November 14, 2013 was allegedly sent to the petitioner calling upon the petitioner to appear on November 30, 2013 *inter alia* to make submissions in regard to claim for compensation and objections with regard to measurement made under Section 8 of the Act. He argued that as per the aforesaid report under Section 5A of the Act, the petitioner has expressed his inability to come from Mumbai to New Delhi and it is undisputed fact that the petitioner is

resident of Mumbai and even the notice was sent to the petitioner on a fictitious address at New Delhi, which notice obviously was not received back by the petitioner. According to Mr. Rawal the entire proceedings were mala fide in nature so as to acquire the subject land by any means and the same resulted in the impugned award dated December 27, 2013 which was passed *ex parte* acquiring amongst others the subject land which is under challenge.

48. It is the submission of Mr. Rawal that the actual and physical possession of the subject property was with the petitioner and the respondent had not paid any compensation whatsoever to the petitioner not even 80% before taking possession in terms of Section 17 of the Act which was invoked in the present case. According to Mr. Rawal, the respondents by relying on the Kabza Karwahai dated December 30, 2013 alleged that the actual physical possession of the subject property has been taken over on the same day. It is however, submitted that the petitioner continues to be in actual physical possession of the said land and the possession as contended by the respondents remains only on paper and that the same cannot be any hindrance in setting aside the impugned acquisition proceedings. Reliance is placed on ***Raghubir Singh (supra)***, wherein the Hon'ble Apex Court has culled out the proposition as to what Act would constitute taking of possession of the acquired land and amongst others it was held that if there was crop standing on the acquired land or building / structure existing, then in such cases, the

authority concerned will have to give notice to the occupier of the building / structure and take possession in the presence of independent witnesses and get their signatures on the panchnama. It is the submission of Mr. Rawal that no such acts have been done by authorities in terms of the law laid down by the Hon'ble Apex Court in the aforesaid case.

49. It was further argued that in the instant case, no notice for taking possession of the subject property was ever given to the petitioner and when the alleged possession of the subject property was taken, there were no independent witnesses present at the time and these facts are very much evident from the said Kabza Karwahai report. It is his submission that the joint survey report dated October 27, 2010 produced by the respondents clearly shows existence of three structures of the subject land, mango trees and crops standing thereupon. Even as per impugned award reference was made to aforesaid joined survey report and it was held that there were mango trees on the subject land for which compensation was also awarded. Mr. Rawal therefore submitted that the subject land was not vacant and the possession thereof could not have been taken without giving notice to the petitioner and without complying with the aforesaid guidelines / propositions enumerated by the Apex Court in ***Raghubir Singh (supra)***. The alleged possession having been taken by respondents therefore has no legal sanctity and the same does not vest in State as alleged.

50. Mr. Rawal further referred to the affidavit of the owner of the Security Agency engaged by the petitioner, which is placed at Page 170-171 of the paper book to contend that no one had visited the subject property on December 30, 2013 as alleged by the respondents much less to take over possession. Mr. Rawal finally refers to the report of the LAC under Section 5A of the Act which itself does not state that a hearing was ever given on February 10, 2012 or that the petitioner did not attend the same.

51. On the other hand, it is the submission of Mr. B. Mahapatra, learned counsel for respondent nos. 1 and 3 that the primary ground in this petition is about the alleged failure on the part of LAC in granting opportunity of hearing under Section 5A of the Act. He counters the said allegation by submitting that the petitioner, despite having information did not attend aforesaid the hearing. He submitted that the petitioner had received a notice dated October 5, 2011 under Section 5A of the Act for the purpose of personal hearing on October 17, 2011. He contacted the LAC on mobile and consequently a hearing was fixed for November 21, 2011 at 3 PM. When the petitioner came to Delhi on that day, the LAC was not available and therefore, the petitioner filed written submissions on the same day.

52. Mr. Mahapatra argued that the petitioner admitted to having received the telephone calls from the office of LAC on February 7, 2012 to the effect that a personal hearing would be held on February 10, 2012 at 3 PM at the

office of the LAC. He further points out that the petitioner has neither disclosed in his petition that he was issued a notice under Section 5A of the Act nor that he received a telephone call to attend the personal hearing on February 10, 2012. He also pointed out that the petitioner has not disclosed, if he received any e-mails on February 7, 2012 and February 8, 2012 from the office of LAC and has instead in his answer to the additional affidavit only questioned the authenticity of the e-mails and call received from the office of LAC. It was argued by Mr. Mahapatra that petitioner has admitted writing the letter dated February 7, 2012 and also the telephone call as regards the hearing on February 10, 2012. He further argued that the petitioner being in touch with LAC on mobile phone strangely could not confirm if any hearing was to actually take place on the said day. He therefore submits that the petitioner has not come to court with clean hands and has concealed material information to take advantage of the judgments under Section 5A of the Act.

53. Mr. Mahapatra refers to the report prepared by the LAC under Section 5A of the Act placed at Page 97 of the paper book to state that the LAC had on different occasions conducted hearing of the interested parties, whose land had been acquired. The report shows that all of them except the petitioner appeared for personal hearing. He further contended that the petitioner had received a notice under Section 5A and also telephone calls and e-mails from the office of the LAC, despite which he failed to appear for the hearing. He

further argued that the report under Section 5A is a detailed one with all the objections being duly dealt with and the same being forwarded to the Government. He relies on ***Ramjas Foundation an Ors. v. Union of India 2012 (14) SCC 38*** to submit that the petitioner not having approached this court with clean hands, his petition deserves to be dismissed.

54. According to Mr. Mahapatra, the possession of the land was taken on December 30, 2013 on the spot vide Kabza Karwahai report prepared on the same day. The said report also talks of demarcation on the spot. He submitted that demarcation report is a piece of conclusive evidence. While referring to the petitioner's contention that the respondent could not have taken possession of the land, having failed to deposit 80% of the compensation amount in compliance with Section 17 (3A) of the Act, it is his submission that it was nowhere the respondent's case that the possession was taken under Section 17 (3A) of the Act. In fact, when hearing under Section 5A had been undertaken, there was no question of taking possession of the land in question under Section 17 of the Act. The respondents took possession of the subject land under Section 16 of the Act.

55. He relies on ***Radhey Shyam Gupta v. Union of India 107 DLT 696*** to submit that the law as regards accepted modes of taking possession of acquired land is recording of a memorandum of panchnama by the Land Acquisition Officer in the presence of witnesses and having the same signed

by them. It would be impossible to take actual physical possession of large tracts of acquired land. It is also common knowledge that in certain cases, the owner / interested person may not cooperate in taking possession of the land. In this regard he further relied upon the judgment of the Supreme Court in the case of ***Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab* 1996 4 SCC 212.**

56. He relied on ***General Manager of Telecommunication and Anr. v. Dr. Madan Mohan Pradhan and Ors.* 1995 Suppl. 4 SCC 268** to contend that once possession of the subject land is taken and acquisition proceedings completed, the validity of notification under Sections 4 and 6 cannot be gone into. He further relied on ***State of Rajasthan v. D.R. Laxmi* 1996 6 SCC 445 & *Aflatoon and Ors. v. Lt. Govt. of Delhi and Ors.* AIR 1974 SC 2077** in support of the above contention. He further argued that the petitioner did not bother to approach the Court immediately after the issuance of notice under Section 4 of the Act and the present action is therefore belated and deserves to be dismissed.

57. He relied on ***State of Tamil Nadu v. Mahalaxmi Ammal and Ors.* AIR 1996 SC 866** to contend that non-service of notice under Sections 9 and 10 of the Act is curable irregularity and on no account does the consequent award made under Section 11 become invalid.

58. Mr. Mahapatra would rely on ***Tej Kaur v. State of Punjab*, 2003**

SCALE 5 to contend that it is not necessary for the LAC to give an actual personal hearing to the land owner under Section 5A of the Act, if the report so prepared by him under Section 5A duly deals with all the objections raised by the concerned land owner. He submitted that in such a situation not giving a personal hearing would not be fatal to the enquiry under Section 5A of the Act.

59. While referring to the judgments relied upon by the petitioner in **Lajja Ram and Ors. (supra)**, Mr. Mahapatra contended that in the instant case the LAC had not changed his stand and had taken into consideration the objections of the petitioner after he failed to appear on the appointed date. Therefore, the factual circumstances as prevalent in **Lajja Ram (supra)** vary vastly from the present case. In so far as the reliance placed by the petitioner in **Raghubir Singh (supra)**, he stated that in the said case, the Collector had proceeded to decide the objections by assuming that notice had been delivered to all objectors. There was also an allegation that someone in the office of the LAC had forged the appellant's signature to show his presence at the time of hearing. He therefore contended that the said judgment would not apply to the present facts.

60. Ms. Sobhana Takiar, learned counsel for the respondent / DDA would submit that the subject acquisition proceedings in respect of land in village Mehrauli was for the planned development of Delhi for Vasant Kunj

Residential Scheme. She would submit that vide communications dated August 18, 2008, February 22, 2009, May 03, 2011 and June 22, 2011 the respondent DDA had requested to respondent Nos.1 and 3 to reacquire the subject land following the quashing of earlier acquisition proceedings. She would submit that the notification under Section 4 of the Act was issued on July 21, 2011. The petitioner subsequently filed objections under Section 5A on November 21, 2011 which was beyond the stipulated 30 day period from the date of issuance of notification under Section 4.

61. She would submit that the objections filed by the petitioner challenged the subject acquisition proceedings as being unlawful, illegal and void. The objections further pointed out to unlawful discretion vis-a-vis owners of adjacent tracts of land. Ms. Takiar would refer to para 2 of the said objections wherein the petitioner has stated that respondent / DDA converted all the agricultural land in Mehrauli including subject land as residential in early 1980 to build Vasant Kunj Pocket 'C' in Sector A.

62. She would refer to the petitioner's communication dated August 18, 2011 wherein he has requested for review on the ground that the current market price of the subject land was much higher. It was also reiterated therein that the respondent DDA had converted all the agricultural land in Mehrauli as residential in the early 1980s to build Vasant Kunj Pocket C in Sector A.

63. Ms. Takiar would then draw our attention to the petitioner's representation for de-notification under Section 48 of the Act of 1894. In this regard she would submit that the law as regards section 48 of the Act was settled inasmuch as it gave an opportunity to the State Government to withdraw from the acquisition at any stage before possession is taken and that such power can be exercised unilaterally and there is no requirement that the owner of the land should be given an opportunity of being heard and that the State Government cannot be compelled to give cogent reasons for a decision not to go ahead with its proposal to acquire a piece of land.

64. She would next draw my attention to report of the ADM/LAC under Section 5A wherein objections of the petitioner have been considered in detail. She would point out that the petitioner has not in any manner impugned this report.

65. Ms. Takiar would further submit that the declaration under Section 6 of the Act of 1894 was issued on July 19, 2012 and the notices under Sections 9 and 10 were issued on November 14, 2013. Award No.05/2013-14 was made December 27, 2013 and possession of subject land was taken on December 30, 2013 vide possession proceedings of the same date. She further pointed out that only Khasra No.918 was found built up and the remaining land was vacant within boundary walls of respondent DDA. She would refer to the petitioner's contentions inter alia:

- a. *there is no public purpose the land has been acquired to avoid contempt proceedings in reference to order dated February 11, 2011 in W.P. (C) 6842/2007;*
- b. *no personal hearing was granted to the petitioner as required under the Act of 1894; and,*
- c. *actual and physical possession is still with the petitioner.*

66. Ms. Sobhana Takiar relied upon ***Aflatoon vs. LG of Delhi & Ors. AIR 1974 SC 2077 and Ajay Krishan Singhal vs. Union of India 1996 (10) SCC 721*** to submit that “*planned development of Delhi*” is a well defined public purpose for which large tracts of land could be acquired.

67. She would further relied on ***General Manager Telecommunication & Anr. vs. Dr. Madan Mohan Pradhan & Ors. 1995 (4) Supp. SCC 268, P. Chinnanna & Ors. vs. State of AP & Ors. 1994 (5) SCC 486, Sanjeevanagar Medical & Health Employees Cooperative Housing Soc. Vs. Mohd. Abdul Wahab & Ors. 1996 (3) SCC 600, Rajasthan Housing Board vs. Shiv Kishan 1993 (2) SCC 84 and Awadh Bihari Yadava vs. State of Bihar 1995 (2) SCC 84*** to submit that the law is settled inasmuch as once possession is taken the land vests in the Government, free from all encumbrances. She would further relied on ***Balmokand Khatri Educational & Industrial Trust, Amritsar vs. State of Punjab & Ors. 1996 (4) SCC 212, Tamilnadu Housing Board vs. A. Viswam 1996 (8) SCC 259, Balwant Narain Bagade vs. MD Bhagwat 1976 (1) SCC 700 and Larsen & Toubro***

vs. State of Gujarat 1998 (4) SCC 387 to submit that the normal and accepted mode of taking possession of an acquired tract of land is by drafting the Panchanama in presence of Panchas and taking possession and giving delivery to the beneficiary in the presence of witnesses. She further submits that retention of possession by the erstwhile owner subsequent to completion of acquisition proceedings would tantamount only to illegal or unlawful possession.

68. She relies on *Gyan Chand Sharma vs. UOI & Anr. MANU/DE/1385/2011, Tej Kumar & Ors. vs. State of Punjab & Ors. 2003 (3) SCALE 5 and State of Mysore vs. Abdul Razzak AIR 1973 SC 2361* to submit that even though the right to a hearing under Section 5A of the Act of 1894 was a valuable right, however, with regard to the facts and circumstances of a case if the objections had already been filed and the merits of the same had been examined by the LAC, a personal hearing was not essential.

69. She also relied on *New Riviera Coop. Housing Society v. Special Land Acquisition Officer 1996 (1) SCC 731* and *State of Haryana vs. Sukhdev 1995 (1) SCC 34* to submit that with the notification of the Award and consequent taking over possession of the subject land the acquisition proceedings attained finality and the same cannot be set aside at a later stage.

70. She further relied on ***Roshanara Begum vs. UOI AIR 1996 Delhi 206*** to submit that no notice is necessary under section 9 before taking possession of subject land. She relied on ***Bharat Singh vs. State of Haryana AIR 1988 SC 2181*** to submit that the petitioner could not complain of any discrimination on the ground that his land has been acquired while leaving that of others.

71. She also relied on ***Rammiklal N. Butta & Anr. vs. State of Maharashtra 1997 (1) SCC 134*** to submit that the power under Article 226 of the Constitution must be exercised only in furtherance of interest of justice and not merely on making of a legal point and also on ***HFC vs. Jagdamba Oil Mills & Anr. JT 2002 (1) SC 485*** to submit that courts should not place reliance on decisions without discussing how the factual situation fits in with the facts and circumstances of the decision relied upon.

72. Having heard the learned counsel for the parties and perused the record, before we deal with the submissions so made, it is important to refer to the relief sought for in the present petition.

73. In substance, this petition has been filed challenging the award dated December 27, 2013 with regard to the land measuring 34 Bighas and 18 Biswa in Mehrauli; notifications issued under Sections 4 and 6 and the notice issued to the petitioner under Sections 9 and 10 of the Land Acquisition Act

of 1894 (in short Act of 1894). We may state here that the khasras of the land with which we are concerned have undergone a change in the following manner:

Present Khasra No.	Old Khasra No.	Area
703	1303	0-13
704	1304	0-18
705	1305	0-19
707	1307	0-18
711	1309	0-18
712	1311	1-10
713	1312	1-10
714	1313	0-17
715	1314	0-17
716	1315	4-16
717	1316	4-05
718	1317	2-06
736	1329	4-02
738	1331	1-00
739	1332	0-17
740	1333	1-18
743	1336	0-15
914	1472	0-10
<u>918</u>	<u>2695/1475</u>	<u>0-10</u>
912	2855/1470	0-02
723	1322	1-03
Total Area		32-18

74. Two issues which fall for our consideration are (i) whether the petitioner was denied the benefit of hearing of his objections to the Section 4 notification as contemplated under Section 5A of the Act of 1894 resulting in violation of principles of natural justice; and (ii) whether in the facts of this

case, respondent / LAC was required to issue notice for taking possession of the land in question.

75. On Issue no.1, before we deal with the rival submissions, it is necessary to reproduce Section 5A of the Act of 1894 as under:

*“5A. **Hearing of objections:-** (1) Any person interested in any land which has been notified under section 4, Sub-section (1) as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.*

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]

Declaration of intended acquisition”

76. A reading of sub-section 2 of Section 5A envisages the rule of principles of natural justice and is a *sine qua non* to the acquisition proceedings under the Act. The Section contemplates an opportunity of hearing to the objector to the notification issued under Section 4(1) of the

Act. This is primarily for the reason that taking of a man's property is a serious matter and before depriving him, and to prevent arbitrariness, it is reasonable that such a hearing is given. (Ref. *State of Punjab vs. Gurdayal Singh* 1980 (2) SCC 471 and *Raghubir Singh Sehrawat v. State of Haryana* 2012 (1) SCC 792).

77. There is no dispute that it is only after objections are made and the same are considered by the Collector recommendations supported by reasons are made as to why a particular piece of land should or should not be acquired.

78. In the case in hand, a notification under Section 4 of the Act of 1894 was issued on July 21, 2011. It is the case of the petitioner as seen from his representation dated February 7, 2012 (Annexure R1/4), that he had received on October 17, 2011 a notice dated October 5, 2011 for personal hearing on October 17, 2011. It is stated that it allowed no time for him to make arrangements for travel to Delhi to be present in time for the said hearing. He immediately faxed / telephoned repeatedly the Office of the LAC for another date of hearing, but was never heard in spite of repeated requests.

79. It is his case that a date of hearing on November 21, 2011 at 3 Pm was fixed by the Land Acquisition Collector. He along with his Sr. Counsel had travelled from Mumbai to Delhi and when they appeared, they found that

LAC was not in Office. He submitted his written arguments on the same day itself. We have seen the written arguments submitted by the petitioner. The same runs into 5 pages wherein the petitioner challenges the notification under Section 4 under 15 different heads. Mr. Rawal had contended that on February 7, 2012 a telephone call was received in his Mumbai Office, while he was not there, from a person who claimed to be SDM, calling from Delhi and wanted the petitioner to be present on February 10, 2012 at 3 PM for personal hearing. Immediately thereafter, the petitioner wrote a letter dated February 7, 2012 narrating the aforesaid facts, and informing the reason for the petitioner not to attend the hearing as he was not sure about the authenticity of the call. He requested a formal notice be issued so that he can make travel arrangements to Delhi from Mumbai.

80. Mr. Rawal during his argument had drawn our attention to a letter dated February 7, 2012 to submit that the petitioner had in the said letter narrated the events of November 21, 2011. In his letter dated February 7, 2012, petitioner had stated that the submissions made on November 21, 2011, be considered and if the same did not find favour, then a personal hearing may kindly be fixed by a formal notice. According to him, this shows that the petitioner did insist on a personal hearing be given to him, but the same

having been denied, is in violation of principles of Natural Justice and the right to hearing as contemplated under Section 5A of the Act of 1894.

81. There is no dispute that no further date was fixed, but based on the written arguments filed by the petitioner, the Collector did file his report on May 16, 2012 to the objections filed under Section 5A of the Act by the petitioner. The report reveals that the Collector had considered the following objections raised by the petitioner and the documents filed by him to the notification under Section 4 of the Act of 1894:

“The objections filed by Sh. B.S. Tolani are as follows:

- a. The said notification is unlawful, invalid and void as their land is selected on the basis of pick and choose policy and no transparent and fair basis are there.*
- b. The said land is within DDA Residential Vasant Kunj Colony and is surrounded by 3 sides from DDA residential flats.*
- c. No specific public purpose behind acquisition.*
- d. That no sanction of Competent Authority within DDA is taken while making the request for re-acquisition of land.”*

In support of the objections / claims, the objector has filed following documents and evidence.

- a. Relevant page of Delhi Master Plan 2021 showing land as residential alongwith Vasant Kunj Colony area in Sector A, Mehrauli.*
- b. Letter No. F.9(50)/02/CRC/South/DDA/7 dated 14.01.2018 of Director (N.L.) of DDA to Dy. Secretary LA, L & B Department, Delhi State.*

c. Letter No. F.9(50)/02/CRC/South/DDA/48 dated 22.01.2007 of Director (N.L.) of DDA to Dy. Secretary LA, L & B Department, Delhi State.

d. Letter No. F.9(30)/2001/CRC/North/588 dated 18/08/08 of Director (N.L.) of DDA to Dy. Secretary LA, L & B Department, Delhi State.

e. Letter No. F.9(60)/2001/CRC/South/52 dated 20/02/2009 of Director (N.L.) of DDA to Dy. Secretary LA, L & B Department, Delhi State.”

82. From the above it is clear that the objections / arguments as filed by the petitioner before the Collector were taken on record and considered by him, but did not find favour.

83. Whether this is a sufficient compliance of the requirement of hearing under Section 5A of the Act, Mr. Rawal had relied upon the judgment of the Supreme Court in the case of *Lajja Ram (supra)*. In the said case detailed objections were filed to Section 4 of the notification. The Land Acquisition Collector, upon considering the objections recommended exempting the petitioner's land from acquisition proceedings. Later on, after making a physical inspection / survey, the Land Acquisition Collector altered his recommendation and withdrew exemption. The High Court in a Petition under Article 226 held that once an award is passed, the land vests in a State free from all encumbrances. The Supreme Court held that the order passed by the Land Acquisition Collector was perverse to the interest of the

appellants and they were entitled to be provided with a reasonable opportunity of hearing to represent their stand before the LAC in the altered circumstances of the case. This non-adherence to the principles envisaged under the Act at the stage of making recommendations not only defeats the purpose and object of the provisions of the Act but also introduced illegality into the opinion formulated by the State Government after considering the report so submitted by the LAC and by necessary implications permeate the notification issued under Section 6 of the Act with such illegality. He also relied upon the judgment of the Supreme Court in the case of ***Kamal Trading (supra)***. In the said judgment a notification was issued on July 29, 1997 under Section 4 of the Act of 1894. The objections were filed on September 8, 1997. The Land Acquisition Officer issued notice dated September 23, 1997 fixing the date of hearing to the objections on September 26, 1997. On receipt of the said notice, the representative of the appellant met the officer on September 25, 1997 and by a letter requested that the hearing of September 26, 1997 be postponed to September 29, 1997 because the constituted attorney of the appellant was held up in Mumbai. The Land Acquisition Officer issued another notice dated September 26, 1997 fixing the hearing to the objections on September 30, 1997. Vide a letter dated September 29, 1997, the appellant again requested for adjournment till October 28, 1997 on the ground that the constituted attorney was unable to

attend and the Advocate was out of station. It was their case that while waiting for another notice of hearing, a declaration dated October 24, 1997 under Section 6 of the Act of 1894 was published. The Supreme Court held that since no hearing was given to the appellant resulting in non-compliance of Section 5A of the Act of 1894, a declaration published under Section 6 of the Act must be set aside. We may note here that the Supreme Court has also found that the report of the Land Acquisition Collector was also vague as the reasons are following:

27. The paragraphs which contain the submissions and the so-called reasons of the Second Land Acquisition Officer need to be quoted:

“Heard the officers present from the requiring body. They vehemently protested as regards the statements contained in this particular letter. Their submissions in short that the statements made by the interested persons are all fake, arbitrary and groundless. They simply endeavour to oust the requiring body by hook or crook in order to grab this office space so that in turn can realise higher rent. Further, the purpose of the requiring body is very much public-oriented and if it is not acquired they will suffer immensely. They further submitted that acquisition proceeding to be completed as quickly as possible inasmuch as they have the time-bound programmes to implement it as per guidelines of the Government for the greater interest of public.

In view of these circumstances and for greater interest of the public, the submissions made by the interested persons by their letter dated 8-9-1997 are overruled.”

84. So, in the afore judgment, the Supreme Court has set aside the acquisition on the ground of violation of provisions of 5A, and also the report is vague, which is not the case here, inasmuch as, the arguments of the petitioner were on record which were considered by the LAC, for recommending acquisition. Ms. Takiar has rightly relied upon the judgment of the Supreme Court in the case of ***Tej Kaur and Ors. V. State of Punjab and Ors. 2003 3 SCALE 45*** wherein the facts are that no personal hearing was given to the appellant therein under Section 5A of the Act of 1894, but the objections on record were considered by the LAC. The Supreme Court held that there is a compliance of Section 5A of the Act and no grievance qua denial of enquiry under 5A can be agitated. In Para 5 of the said judgment the Supreme Court has held as under:

“5. Similarly, in the decision in Shyam Nandan Prasad v. State of Bihar [(1993) 4 SCC 255] this Court observed that affording of opportunity of being heard to the objector during inquiry under Section 5-A is a must and that this provision embodies a just and wholesome principle that a person whose property is being, or is intended to be, acquired, should have occasion to persuade the authorities concerned that his property be not touched for acquisition.”

85. In other words, if the Collector considers the objections, which shows the application of mind, surely there is a compliance of Section 5A of the Act of 1894. As stated above, this is what precisely happened in the case in hand,

as the learned LAC had considered the objections / written arguments made and the documents annexed therewith before forming an opinion in his report which was sent to the Government before a notification under Section 6 of the Act of 1984 was issued on July 19, 2012. So, it is not a case, where the report under Section 5A was given by the Collector without considering written arguments / objections to the subject acquisition proceedings, which substitute a personal hearing. In fact, we note, the petitioner has not raised any issue of hearing from November 21, 2011 till February 07, 2012 and also thereafter, till Section 6 notification was issued on July 19, 2012. Even thereafter, no representation has been filed by the petitioner to the authorities challenging the declaration made under Section 6 of the Act, till the filing of the writ petition in May 2014, by which time, the Award has been passed and possession taken on December 30, 2013. So, it is clear that the petitioner allowed the acquisition proceedings to go on until the award was passed / possession taken. It shows the petitioner had no genuine grievance against Section 5A proceedings held by the Collector. In fact, the 5A report has not been impugned. The plea is therefore rejected. The reliance placed by Mr. Rawal on the last paragraph of letter dated February 7, 2011 would not help the case of the petitioner as in the said letter the petitioner has stated that “*If in spite of above you decide to against above submissions, please be kind to confirm fix time and date for personal hearing X X X*”, which means, if the

authority is satisfied with his arguments, then no hearing is required, if it is otherwise hearing be given, which surely would not suggest hearing be mandatorily given before a decision is taken. In any case, the last para is of no help in view of the aforesaid position of law and our conclusion above.

86. In so far as the second issue, whether the possession of the land in question has been taken, is concerned, Mr. Rawal had relied upon the joint survey report dated October 27, 2010 to contend that the site at some places was cultivated and vegetables were grown and there is a well and two small rooms, which were constructed of T-Iron and as such it was necessary for the respondent nos. 1 and 3 / LAC to give a notice to the petitioner under Sections 9 and 10 of the Act of 1894 before taking possession.

87. In substance it is his plea that the petitioner continued to be in possession of the land and the Kabza Karwahai dated December 30, 2013 on which respondent nos. 1 and 3 sought to rely upon is only a paper possession. We are unable to agree with the said submission of Mr. Rawal for the reason that the petitioner's own case, in Para 2 of his letter dated November 21, 2011, is that the said land is within the DDA Residential Vasnat Kunj Scheme in Sector-A, Pocket-C, Andheria Mor and two residential buildings of Vasant Kunj, DDA are constructed on the Tolani's land; in other words, two buildings were constructed by DDA. That apart even in Para 6 of the said

letter, it is clearly stated by the petitioner that DDA through its Officer Director (Lands) unlawfully obstructed the use of the land by the owner. The relevant part is reproduced as under:

“The Officer of the DDA, Director (Lands) Vikas Sadan, unlawfully obstructed use by owner of this said land by instructing Patwari / Tehsildar Mehrauli, to transfer Tolani land to DDA, and refused to write to Patwari / Tehsildar, to correct the land records, by transferring land to Mr. Tolani, the rightful owner, as DDA could not purchase / acquire Tolani Land, as per Delhi High Court Judgment / Stay Order of 1983. Since 25 long years, DDA and Mehrauli Tehsildar refused to correct land records, causing serious loss to Mr. Tolani.

88. So, it necessarily follows neither the buildings on the land were constructed by the petitioner nor the petitioner was in the use of the land. So to say that the petitioner was in possession of the land, is an incorrect stand on behalf of the petitioner. The Kabza Karwahai report clearly states that the land has been demarcated. It also states wherever the land is falling in an unauthorized colony and is built up at the site, possession of the same has not been taken. In the case in hand, the possession has been taken the report also suggests there was no hindrance faced at site. That apart, the possession of the land was handed over to the DDA, the beneficiary and is in their possession. So, the petitioner accepts the position that the land was for the purpose of Vasant Kunj Residential Scheme.

89. In ***Roshanara Begum (supra)***, this Court had, while relying on

decisions by the Supreme Court, held that non-service of notices under Sections 9 and 10 of the Act of 1894 would not be fatal to the subject acquisition proceedings, as the same are meant only for the purpose of determination of compensation. (See *Ezra Vs Secretary of State, (1905) L.R. 32 I A 93*; *Kasturi Pillai Vs Municipal Council, AIR 1920 Mad 417*; *Shivdev Singh Vs State of Bihar & Others, AIR 1963 Pat 201*; *Prasanna Kumar Dass & Others Vs State of Orissa, 1956 Orissa 114*, *Yousuf Begam Vs State of Andhra Pradesh & Others, AIR 1969 AP 10*; *P.K. Shaikh Vs State of West Bengal & Others, AIR 1976 Cal 149*; *Lakshbir Chand Vs Land Acquisition Collector, Delhi & Others, AIR 1979 Delhi 53*; *State of Punjab Vs Gurdial Singh & Another, AIR 1984 Punjab & Haryana 1*; *Manakchand Sarupchand Lunavat & Others Vs State of Maharashtra & Others, AIR 1989 Bom 339*; and *Dr.G.H.Grant Vs State of Bihar, [1965] 3 SCR 576* .)

90. The Learned counsel for the Respondent / DDA is justified in contending that once possession of the subject land is taken, then it would vest in the government, free from all encumbrances. Reliance in this regard may be laid on *Balwant Narain Bagade vs M D Bhagwat, 1976 (1) SCC 700*.

91. In light of our discussion above, we arrive at the conclusion that in the facts of the present case (i) the Collector had duly complied with the requirements of the proceedings as contemplated under Section 5A of the Act of 1894 and no prejudice has been caused to the petitioner; and (ii) in light of

the actual position on-site, no notice was required to be given to the petitioner prior to taking over possession of the subject land. The present challenge to the subject acquisition proceedings must, therefore, necessarily fail. The writ petition is therefore dismissed.

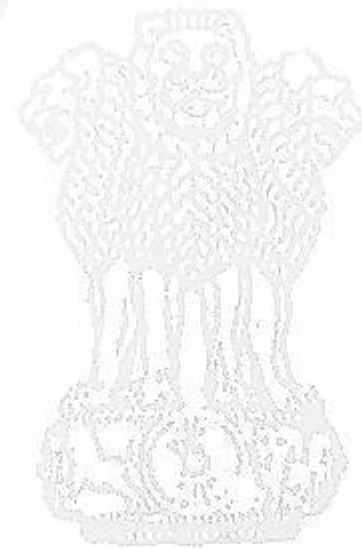
CM No. 6380/2014

Dismissed as infructuous.

V. KAMESWAR RAO, J

G.S.SISTANI, J

DECEMBER 21, 2018/jg



नस्यमेव जयते