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

\+ W.P.(C) 4021/2018, CM Nos. 15852-15853/2018

SAINI COOPERATIVE HOUSE BUILDING SOCIETY LTD.

..... Petitioner

Through: Mr. Ramesh Kumar, Adv.

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent

Through: Mr. Dhanesh Relan, Standing Counsel for the DDA with Ms. Komal Sorout, Adv. for DDA

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **23.04.2018**

CM No. 15853/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 4021/2018

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

> *"It is therefore respectfully prayed that this Hon'ble Court may be pleased to:*
>
> *a) issue a writ of Certiorari or any other appropriate writ, order or direction and thereby quashing the letter dated 22.09.2017* ***(Annexure-P-5)****, 03.11.2017* ***(Annexure-P-7)*** *and letter dated 29.11.2017* ***(Annexure-P-8)*** *issued by and on behalf of the respondent seeking consent of the petitioner to pay enhanced compensation;*

> b) *issue a writ of Mandamus or any other appropriate writ, order or direction thereby directing the respondent to initiate and complete the acquisition proceedings in respect of 1/8th share of Smt. Bhagwati Devi in Khasra No.607, Village Karkardooma, Delhi;*
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> c) *issue a writ of prohibition or any other appropriate writ, order or direction to restrain the respondent from claiming the enhanced compensation to any extent from the petitioner in respect of acquisition of 1/8th share of Smt. Bhagwati Devi in Khasra no.607, village Karkardooma, Delhi;*
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> d) *Award the cost of proceedings in favour of the petitioner; and*
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> e) *pass such further order(s) as may do complete justice in the facts and circumstances of the case."*

2. The facts as noted from the writ petition are that the petitioner is a registered Cooperative House Building Society. In 1969-1970 vide award No.54/1969-1970, land in question was acquired by the Delhi State and was placed on the disposal of the DDA. The land measuring 86 bighas and 8 biswas including land measuring 4 bighas and 5 biswas situated in khasra no.607/3 village Karkardooma, Delhi was allotted to the petitioner Society as per perpetual lease deed dated November 06, 1975. It is averred khasra no.607, was measuring 6 bighas and 12 biswas and was bifurcated in three parts and given nos.607/1, 607/2 and 607/3. On April 24, 2017 Smt. Bhagwati Devi claiming 1/8th share in khasra no.607 village Karkardooma, Delhi filed a W.P. (C) 8517/2015 against the respondent GNCT of Delhi

claiming that acquisition vide award no.54/1969-1970 has lapsed. The said petition was allowed vide order dated April 24, 2017 and acquisition to the extent of 1/8th share of Smt. Bhagwati Devi in khasra no.607 village Karkardooma was declared to have lapsed and respondent was given one year period for fresh acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as 'New Act, 2013'). It is averred that on September 22, 2017 the DDA has sent a letter to petitioner seeking consent of the petitioner to pay the amount of enhanced compensation. A response dated October 05, 2017 was given by the petitioner denying its liability in the matter. The relevant paragraphs of the reply read as under:

> *"2. As per clause 1 on page 3 of the perpetual lease, it was agreed by the society that in case the compensation awarded by the Land Acquisition Collector is enhanced on reference on appear the same shall be paid by the society.*
> *3. The land was allotted to the society at the then prevailing rates at which rate the land has been allotted to the other societies also.*
> *4. It was never agreed that the society shall pay for any compensation which may be fastened upon DDA on account of any fault or negligence or inaction of the DDA*
> *5. Form perusal of the above captioned letter, it appears that order dated 24.04.2017 has been passed due to the DDA not having followed complete procedure of acquisition. The default on part of DDA is apparent from the said letter. As such, the society cannot be held liable to pay the amount which is ultimately the liability of DDA having arisen out of its*

> *careless act and conduct. There was no clause, for payment of such type of liability, ever agreed in the perpetual lease executed in favour of the society."*

3. The respondent DDA vide its letter dated November 03, 2017 which was in reference to the letter of the petitioner, reiterated its stand and called upon the petitioner to convey confirmation to deposit the amount to DDA to meet the additional financial liability on account of payment of enhanced compensation under Land Acquisition, Rehabilitation and Resettlement Act, 2013. The said letter was followed by a communication dated November 29, 2017 by the respondent / DDA.

4. It is the submission of the learned counsel for the petitioner that in terms of Clause II (1) of the perpetual lease deed executed between the petitioner and the DDA, the liability to pay the compensation is only to the extent of paying enhanced compensation, if the same is enhanced on reference or in appeal or both. In other words, it is the submission that the said communication did not contemplate the payment of enhanced compensation by the petitioner on the acquisition having been lapsed. The other submission which the learned counsel for the petitioner makes is that as per the policy of the respondent, the plot of land given to the petitioner under the perpetual lease was developed by the petitioner. Out of the

developed land, except the plotted land, the remaining land was returned to the respondent. On the returned land, the respondent has built local shopping centre and convenient shopping centre. The shops built therein have been auctioned.

5. According to him, the sale proceeds realised from sale of the said shops are with the respondent. As per policy, the respondent is under obligation to utilize the said sale proceeds for the development of infrastructural facilities in the concerned society as per acquisition policy guidelines in the office order dated June 26/27, 1970 and no amount has been spent by the respondent. So in substance the liability of the enhanced compensation must be borne by the DDA.

6. On the other hand, Mr. Dhanesh Relan, learned Standing counsel appearing for the DDA states, in view of the fact that the acquisition proceedings have been lapsed, by this Court, the DDA has rightly issued the aforesaid letters to the petitioner, calling upon the petitioner, the beneficiary to convey its consent for paying the enhanced compensation under the provisions of the Act 2013.

7. According to him, once the consent is conveyed to the DDA then the fresh proceedings can be initiated and the enhanced compensation shall be

quantified and communicated to the petitioner for deposit of the amount with LAC. He seeks the dismissal of the writ petition.

8. Having heard the learned counsel for the parties, there is no dispute that the acquisition proceedings qua the land i.e. khasra no.607 measuring 6 bigha 12 biswas having been lapsed, the only option with the DDA is to seek consent from the petitioner whether it is ready to bear the compensation in terms of the New Act 2013.

9. Accordingly, the DDA has written a letter dated September 22, 2017. The learned counsel for the petitioner relied upon the lease deed to show that it is only in the two eventualities that the DDA could have claimed enhanced compensation i.e. on a reference or in an appeal or both, does not appeal to the Court as it is clear, in normal course, compensation is enhanced on a reference or in an appeal. No one at that point of time contemplated that Act of 2013 shall be enacted, and in certain eventualities the acquisition can be declared lapsed, and if fresh acquisition is resorted to, a higher compensation need to be paid. The acquisition having lapsed and liberty having been granted for fresh acquisition under the new Act, the consequence shall be of payment of compensation in terms of the said Act, which shall be higher. The DDA cannot be fastened with the liability for the

simple reason, it is not the beneficiary in the sense, the land has been leased out and it must be the members of the petitioner Association who are lessees of the plots who should pay. Even the second submission made by the learned counsel for the petitioner that the land other than plotted land having been returned to the respondent DDA which developed the local shopping centre and convenient shopping centre and the shops built therein have been auctioned, it shall be the liability of the DDA to pay higher compensation, is also not appealing to the Court. From a perusal of para v (at page 12) it is clear that the policy itself contemplates that the DDA was under obligation to utilise the sale proceeds for development of infrastructural facilities in the concerned society and nothing more which surely would not contemplate payment of higher compensation in certain eventualities, when the acquisition of land has lapsed in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

I do not see any merit in the petition, the same is dismissed.

CM No. 15852/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 23, 2018/*aky*