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

+ **W.P.(C) 6117/2018 & CM APPL. 23743/2018**

MANJU ARORA & ANR

..... Petitioners

Through: Mr. Rajesh Yadav with Mr.
Dhananjay Mehlawat, Advs

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Mr.
Vinod Tiwari and Mr. Akhilesh
Kumar, Advs for Respondent No. 1
Ms.Gunjan Sinha Jain with Mr.
Mukesh Kumar, Adv for respondent
no. 2
Mr. Yeeshu Jain, Standing counsel
with Ms. Jyoti Tyagi, Adv for
respondent no. 3

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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30.05.2018

CM APPL. 23744/2018 (exemption)

1. Allowed, subject to just exceptions.

W.P.(C) 6117/2018 & CM APPL. 23743/2018

2. Issue notice.

3. Mr. Rajesh Gogna accepts notice on behalf of respondent no. 1, while
Ms.Gunjan Sinha Jain accepts notice on behalf of respondent no. 2.
Likewise, Mr. Yeeshu Jain accepts notice on behalf of respondent no. 3.

4. With the consent of the parties, the matter is taken up for hearing and final disposal at this stage itself.
5. Briefly, the grievance of the petitioners is that the notification dated 12.01.2018 does not describe correctly the subject land, located in, Khasra No.424, Village Rangpuri, Tehsil Vasant Vihar, New Delhi
6. According to the petitioners, the requisite approvals were taken in 1991-1992 for using the subject land as petrol pump.
7. It is the case of the petitioners before me, that since 1993 the subject land has been used as petrol pump.
8. Mr. Rajesh Yadav, who, appears on behalf of petitioners says he does not wish to challenge the acquisition of the land for construction of the Dwarka Expressway. The petitioners grievance qua the description of the subject land stems from the concern that incorrect description could impact the compensation payable to them.
9. To be noted, the petitioners were given an opportunity to file their objections. The objections were dismissed by the competent authority vide order dated 28.03.2018.
10. Since the order passed is brief, I intend to extract the same :-

“ Objector Major Ravinder Kumar Arora, in person and stated that the land is not agriculture land and is converted to commercial property in the form of petrol pump and therefore notification has been issued without application of mind.

The above said objection is rejected as the use of land does not change the nature of land if it is not converted into commercial purpose as per the norms and rule under law. Hence, commercial use does not dilute the acquisition proceeding.

The objector also stated that this project is not a PUBLIC PURPOSE and hence the notification U/s 3A is not valid.

It is hard to believe that construction of road or even a national highway which are built for common man for their convenience is not a public purpose. Also, the objector failed to convince through his verbal and written documents that this is not for a public purpose.

Therefore, there is no merit in the objections and hence rejected”

11. Ms.Gunjan Sinha Jain, who, appears on behalf of respondent no. 2/NHAI relied upon the provisions of section 3(C)(1) of the National Highways Authority Act, 1956 (‘Act’), in support of her contention that the only aspect which the competent authority was required to examine was the purpose for which the subject land was sought to be acquired and not matters concerning compensation. The learned counsel, thus, contends that the purported stand of the petitioners that the use of the subject land was converted from agricultural to commercial was not an aspect which competent authority was required to examine.

11.1 In so far as the purpose for which subject land was acquired, learned counsel for respondent no. 2 says that the conclusion of competent authority is correct, which is, that it was required for a “public purpose”.

12. Mr. Yeeshu Jain, who, appears on behalf of respondent no. 3 says that the original nature of the subject land was agriculture and that, merely, because later it was put to use for commercial purposes would not change the nature of the land.

13. Learned counsel for respondent no. 2, however, says that she cannot but argue that if the subject land is put to commercial use that could impact the compensation which the petitioners would get.

14. To be noted, compensation is required to be determined under Section 3(g) of the Act, therefore, that stage has not been reached yet.

15. In these circumstances, the writ petition is disposed of with direction that notwithstanding the description of the subject land as agriculture in the notification dated 12.01.2018, the petitioners will be at liberty to contend that because the subject land was used for commercial purposes, the compensation, if any, payable to them should be the same that ought to be paid qua a commercial property.

15.1 Accordingly, the concerned authority will while determining the compensation hear, *inter alia*, submissions, if any, advanced in this behalf by petitioners and decide the issue after taking into account the submission and material placed before it in that regard, albeit, in accordance with law.

16. Consequently, pending application shall stand closed.

RAJIV SHAKDHER, J

MAY 30, 2018

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