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

% *Date of Judgment: 06<sup>th</sup> March, 2018*

+ W.P.(C) 7356/2016

PYARI RAUTHAN

..... Petitioner

Through: Mr.Pankaj Vivek, Ms.Manpreet, Mr.Anurag  
and Mr.Atul Tripathi, Advocates.

versus

LAND ACQUISITION COLLECTOR / A.D.M. & ORS.

..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel with  
Ms.Jyoti Tyagi, Advocate for  
respondent/LAC.

Mr.Virender Pratap Singh Charak and  
Ms.Shubhra Parashar, Advocates for  
respondent no.4/UOI.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G.S.SISTANI, J. (ORAL)**

1. On 13.02.2018, when the matter was taken up for hearing, we were informed that the counter affidavit has been filed and on the basis of this statement the order was dictated. Subsequently, it was found that the counter affidavit of the LAC was not on record. Accordingly, the matter was listed today for directions.
2. Ms.Joyti Tyagi, counsel for the LAC clarifies that in fact, the counter affidavit was filed on 28.08.2017 but the same was not taken on record and returned under objections raised by the Registry.

3. Counter affidavit has been refiled today by Ms. Jyoti Tyagi, counsel for the LAC and the same is taken on record.
4. This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings with respect to the land i.e. residential plot no.25 area measuring 200 square yards out of Khasra No.624/2-625/2 situated in the revenue estate of village Roshanpura, abadi known as Shyam Vihar, Delhi (hereinafter referred to as 'the subject land') is deemed to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act'), as neither the physical possession has been taken nor compensation has been paid to the petitioner.
5. Counsel for the petitioner submits that in this case, plot no.25 area measuring 200 square yards out of Khasra no.636 situated in the revenue estate of village Roshanpura, Delhi was transferred in favour of the petitioner by Shri Kundan Singh through registered General Power of Attorney & Will coupled with Agreement to Sell, affidavit and receipt dated 25.02.1999. However, it has now been learnt that the plot falls in Khasra No.624-625 of Village Roshanpura. Actually this colony was carved out by one Shri Kundan Singh @ Kundan Ram who was holding POA/authority for sale of plot in Khasra Nos.624, 625, 629, 633, 636 etc. and he had carved out these dozens of plots, one of which was purchased by the petitioner. The petitioner had no means of knowing the actual Khasra number as the same was in the knowledge of the seller Shri Kundan Singh @ Shri Kundan Ram,

therefore, she believed all along that the Khasra numbers mentioned were correct, however it was learnt by her in 2016 that her plot falls in Khasra No.624-625 of Village Roshanpura which is situated just near to Khasra No.636 of Village Roshanpura. Therefore, Shri Kundan Singh @ Shri Kundan Ram executed fresh General Power of Attorney and Addendum to the Agreement to Sell, Possession Letter and Affidavit admitting delivery of possession of Plot No.25 situated in Khasra No.624-625 of Village Roshanpura at the time of sale itself on 25.02.1999. He further submits that the Provisional Certificate of Regularization was issued in favour of the colony where the land is situated being Shyam Vihar, an unauthorized colony.

6. A Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 07.04.2006, a Notification under Section 6 of the Act was issued on 04.04.2007 and an Award bearing No.08/2008-09 was passed on 14.11.2008. Counsel for the petitioner submits that neither physical possession has been taken nor compensation has been tendered to the petitioner. He also submits that his submission is further fortified by the stand taken by the LAC in the counter affidavit.
7. Counsel for the LAC submits that the subject land vests in Gaon Sabha, thus, the petitioner would not be entitled to claim any compensation. Mr.Jain has also opposed this petition also on the ground that the petitioner is not the rightful owner. In support of his submissions, he relies on paras '5 & 6' of the counter affidavit, which read as under:

*"5. That as per Item 7 of the Statement A the subject land is vested in Gram Sabha. In view of the above the petitioner is*

*required to prove his competence to file the present writ petition. Even otherwise the petitioner herein purchased the said land unauthorisedly in an unauthorized colony. Thus the petitioner have no right, title or interest in or to the land in question.*

6. *That as per records available with this office, possession of the subject land comprised in Khasra Nos.636/2 (4-10), 624/2(3-14) and 625/2(2-12) situated in village Roshanpura has not been taken due to built up. Further, notice U/s 12(2) cannot be served to the petitioner as he is not the recorded owner in respect of the land”.*

8. Counsel for the petitioner submits that the objection raised by Mr.Jain, as far as title of the land is concerned, be kept open to be decided in appropriate proceedings. Counsel submits further that an identical issue regarding the Gaon Sabha had arisen before another Division Bench of this Court in the case of ***Sanjeev Solanki Vs. Delhi Development Authority and Ors, W.P. (C) 1999/2015***, decided on 24.01.2017. Counsel submits that a similar view has also been expressed by this Court in the case of ***Parshotam Joshi vs. Govt. of NCT of Delhi & Ors., W.P. (C) 4255/2016***, decided on 08.11.2017.
9. We have heard the counsel for the parties.
10. As far as the objection raised by the counsel for the LAC with regard to the land being vested in the Gaon Sabha is concerned, we deem it appropriate to follow a decision rendered by a Division Bench of this Court in the case of ***Sanjeev Solanki (supra)***, paragraph 5 of which reads as under:-

*“5. While we have declared that the subject acquisition has lapsed, it is made clear that this would not amount to giving title to the petitioner or perfecting the petitioner’s title inasmuch as Mr.Jain has taken the plea in the counter-affidavit filed on behalf of the respondent no.2 that the Gaon Sabha has been shown as the recorded owner. This fact is disputed by the learned counsel for the petitioner. But, we are*

*not entering into the controversy of title which may be sorted out elsewhere. Insofar as the acquisition is concerned, the same has lapsed because neither physical possession was taken over nor compensation was paid.”*

11. On reading of the counter affidavit, it leaves no room for doubt that neither the physical possession of land i.e. residential plot no.25 area measuring 200 square yards out of Khasra No.624/2-625/2 has been taken nor the compensation has been tendered.
12. Accordingly, the petitioner is entitled to a declaration that the acquisition proceedings in respect of the land subject matter are deemed to have lapsed. It is declared accordingly. However, we make it clear that we have not expressed any opinion on the title of the above land. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction.
13. The writ petition stands disposed of in above terms.

**CM No.30221/2016 (stay)**

The application is disposed of, in view of order passed in writ petition.

नस्यमेव जयते

**G.S.SISTANI, J.**

**SANGITA DHINGRA SEHGAL, J**

**MARCH 06, 2018**

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