

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 30th October 2018
Decided on: 26th November 2018

+ **W.P. (C) 7964/2016 & CMs 33043/2016 and 13530/2018**

VIMAL JAIN

.....Petitioner

Through: Mr. Ravinder Sethi, Sr.
Advocate and Mr. Sandeep
Srivastava, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

....Respondents

Through: Mr Ankur Chibber and Mr
Bhanu Gupta, Advocates.

+ **W.P. (C) 6461/2000 & CMs 45667/2016 and 13529/2018**

KHUSHIRAM

.....Petitioner

Through: Mr. Ravinder Sethi, Sr.
Advocate and Mr. Sandeep
Srivastava, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

....Respondents

Through: Mr. Sanjay Poddar, Senior
Advocate with Mr. Yeeshu
Jain, Standing Counsel and Ms.
Jyoti Tyagi, Advocate for
L&B/LAC.
Mr. Parvinder Chauhan,
Advocate for DUSIB.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

JUDGMENT

Dr. S. Muralidhar, J.:

1. There is a long history to these cases which concerns the acquisition proceedings pertaining to the land comprised in Khasra Nos. 426 (0-10), 435 (4-16), 401 (4-16), 576 (3-16), 577 (2-8), 587 (6-14), and 589 (4-16) totally admeasuring 27 *bigha* 16 *biswa* situated in the revenue estate of village Bhalaswa, Jahangirpur, Delhi (hereinafter referred to as ‘the land in question’).

Proceedings in W.P. (C) 6461/2000

2. W.P. (C) 6461/2000 was initially filed by one Mr. Khushiram stating that he was the owner of the land in question and was in possession of the same. The petition assailed Notification No. F.11(24)/98/L&B/LA/8895 dated 15th September 2000 issued under Sections 4 and 17 (1) & (4) of the Land Acquisition Act 1894 (‘LAA’) and prayed for direction that the Respondents not interfere with his possession of the land in question. Reference was made to certain other writ petitions pending before this Court at the time concerning the acquisition of land in the same village and for the said purported public purpose, i.e. rehabilitation of *jhuggi-jhopri* clusters (‘JJ clusters’).

3. The said writ petition was heard first on 24th October 2000 where notice was issued and it was directed that *status quo* as to the possession be

maintained. It was further directed that “Petitioner shall also not make any additional construction”. The main ground of challenge was that the Petitioner was deprived of an opportunity of being heard as the invocation of Section 17 of the LAA would deprive them of the opportunity to raise objections under Section 5A of the LAA.

4. The said writ petition was heard along with a batch of petitions and a common judgment was passed on 12th December 2002. It was held by the learned Single Judge that the questions that arose in the cases were fully covered by the judgment of this Court dated 31st May 2002 in ***Praveen Jain v. Union of India 99 (2002) DLT 646*** where, in similar circumstances, the notifications were quashed. It was held that the Government ought not to have invoked Section 17 of the LAA and dispensed with the requirement of Section 5A of the LAA. It was contended before the learned Single Judge on behalf of the Respondents/Land Acquisition Collector (LAC) that the Division Bench in ***Praveen Jain (supra)*** had failed to correctly apply the principles laid down by the Supreme Court in ***Jai Narain v. Union of India AIR 1996 SC 697*** and, therefore, the judgment in ***Praveen Jain (supra)*** was ‘*per incuriam*’. The learned Single Judge observed that he was bound to follow the decision of the Division Bench in ***Praveen Jain (supra)*** and it would be for the Supreme Court to decide whether the decision in ***Jai Narain (supra)*** had been correctly applied by the Division Bench of this Court in ***Praveen Jain (supra)***. Accordingly, all the petitions, including W.P. (C) 6461/2000 filed by Mr. Khushiram, were allowed and the land acquisition notifications were quashed.

5. It appears that while W.P. (C) 6461/2000 was pending, an application being CM No. 2833/2002 was filed by Mr. Khushiram himself in which, *inter alia*, he admitted to having been offered compensation and, therefore, he did not wish to pursue the said writ petition. The prayer in the said application was to allow the Petitioner to withdraw the challenge to the impugned notifications in respect of Khasra Nos. 426 (0-10), 435 (4-16), 401 (4-16), 577 (2-8), 587 (6-14), 589 (4-16), and further, to allow the Petitioner to pursue the petition with respect to half share of 576 (3-16) which had a built up area over it.

6. The order sheets show that the said application was simply kept pending and the attention of the learned Single Judge was not drawn to it, although the affidavit in support of the application was sworn on 10th January 2002. This application being CM 2833/2002 was shown in the order sheets dated 28th August 2002 onwards. Therefore, it was certainly on the file of the Court when the final judgment dated 12th December 2002 was passed. No specific order was passed vis-à-vis the said application at any point in time.

7. In the meanwhile, even before the judgment was pronounced by this Court in that petition, Award No.6/2002-2003 was pronounced on 12th April 2002 in respect of the entire land in question and compensation was paid on 27th May 2002 to Mr. Khushiram's sons, namely Mr. Sheo Raj and Mr. Surender.

8. It appears that a Special Leave Petition ('SLP') was preferred by the LAC before the Supreme Court against the judgment dated 12th December 2002. While said SLP was pending before the Supreme Court, on 4th March 2003,

a second notification under Section 4 of the LAA was issued in respect of the land in question. In view of this development, the SLP was dismissed as withdrawn.

9. By a letter dated 31st March 2003, the Slum and JJ Department intimated the Deputy Secretary, L&B Department, Government of NCT of Delhi that the fresh notification issued on 4th March 2003 was required to be rectified since the lands admeasuring 423 *bighas* 16 *biswas*, including those belonging to Mr. Khushiram, had already been acquired and compensation had already been duly paid to the beneficiaries. Mr. Vimal Jain, the Petitioner in the accompanying writ petition, being W.P. (C) 7964/2016, has placed on record a copy of an additional affidavit dated 8th September 2017 sworn by the LAC referring to the aforementioned letter dated 31st March 2003 in which it was pointed out that the notification dated 4th March 2003 under Section 4 of the LAA, which was published in the newspaper on 7th March 2003, was “legally and technically incorrect”.

10. It further appears that on the basis of said letter, a further note was prepared by the Joint Secretary, L&B on 27th August 2003 in which a reference was made to the aforementioned letter. On 10th December 2003, a recommendation was made to exclude the said land from the notification. This was apparently accepted and it led to a fresh notification under Section 6 of the LAA dated 4th November 2004.

Circumstances leading to the filing of W.P. (C) 7964/2016

11. Mr. Vimal Jain (hereinafter referred to as ‘the Petitioner’), who has preferred W.P.(C) 7964/2016, states that he had acquired the land in

question from Mr. Khushiram on 10th May 2004 by virtue of a duly executed agreement to sell, power of attorney, Will, receipt, and other documents. According to him, the land in question stood excluded from the notification under Section 6 of the LAA dated 4th November 2004, and therefore from the notification dated 4th March 2003 under Section 4 of the LAA. Thus, it is his submission that the land in question, as on the date of its purchase, was free from acquisition. According to him, all the legal heirs of Mr. Khushiram also gave a 'no objection' to the land being mutated in his favour. Further according to the Petitioner, the entire acquisition proceedings *qua* the land in question stood lapsed in terms of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act 2013 ('the LAA 2013'). According to the Petitioner, the purported public purpose, i.e. rehabilitation of slums and JJ clusters, "has not only lost its sanctity but also the relevance and usage".

12. On 24th September 2015, the Petitioner submitted a representation to the LAC (North) seeking, *inter alia*: (i) that the LAC (North) mutate the land in question in his name; and (ii) that the LAC (North) accept the refund of compensation paid pursuant to the notification sated 15th September 2000 and Award No.6/2002-03 dated 12th April 2002 which stands quashed. Pursuant to the above representation, the Respondents purportedly wrote letters to other similarly situated persons on 16th November 2016 and 12th May 2016, offering to return the possession of the lands on refund of the compensation received for the acquisition. On 24th May 2016, the LAC issued a notice of the proceedings originating from the representation dated 24th September 2015 of the Petitioner.

13. According to the Petitioner, the Respondents, which included the Delhi Urban Slum Improvement Board ('DUSIB') [the successor-in-interest of the Slum & JJ Wing, the original beneficiary under the land acquisition proceedings concerning the land in question), entered appearance before the LAC on 12th May 2016. On 3rd June 2016, the LAC allowed the Petitioner's representation and directed him to refund to the LAC the entire amount of compensation. A further letter was issued to them on 24th June 2016 asking him to refund the entire amount of land compensation paid in terms of Award No.6/2002-03 along with 9% and 15% interest as mentioned in the aforementioned letter totalling to Rs.3,26,30,694/-.

14. Thereafter, the Petitioner submitted demand drafts dated 24th and 28th June 2016 for a total sum of Rs.3,26,30,694/- to the LAC along with a request to mutate the land in question in his favour. According to the Petitioner, by a letter dated 5th July 2016, the LAC (North West) intimated the Sub Divisional Magistrate ('SDM'), Model Town of his compliance with the order dated 3rd June 2016 and requested that necessary action be taken in terms of the said order. According to the Petitioner, the demand drafts were duly encashed and by a letter dated 19th July 2016, the LAC directed the Deputy Controller of Accounts (L&B) to submit the receipt to DUSIB (Respondent No.4). The Petitioner submits that, thereafter, his name was duly mutated against the above *khassra* numbers in the revenue records, without any objections from the legal heirs of the late Mr. Khushiram.

15. The Petitioner states that he was "shocked" to receive a copy of the impugned letter dated 3rd August 2016 addressed to the Deputy Controller of

Accounts (L&B) intimating that two-member committee had been constituted on 22nd July 2016 to inspect the relevant papers and records in connection with “the handing over of 27 *bighas* 16 *biswas* of land in village Bhalaswa, Jahangirpur”. Furthermore, the Deputy Controller of Accounts (L&B) was directed to return the cheque dated 19th July 2016 for a sum of Rs.3,26,30,694/- in favour of the Secretary, L&B. It was further stated in that letter that the order passed by the LAC (North) on 3rd June 2016 was without approval from the Competent Authority and the steps taken consequent to that order stood suspended till completion of the inquiry.

16. The Petitioner also received a cheque for the aforementioned amount in his name along with a letter dated 3rd August 2016 addressed to the SDM, Model Town wherein it was stated that the representation of the Petitioner was to be reconsidered. The Petitioner declined to accept the cheque and returned it by a letter dated 22nd August 2016. According to the Petitioner, on 23rd August 2016, DUSIB officials attempted to plant their board on a vacant portion of the property. According to the Petitioner, this was an illegal trespass. He sent a legal notice dated 24th August 2016 to DUSIB asking them to desist from taking over the possession of the land in question. He also filed a complaint with the police. On 30th August 2016, he filed W.P.(C) 7964/2016 in which, on 9th September 2016, while directing notices to be issued, a *status quo* order was passed by this Court.

Application for recall of earlier judgment and restitution of proceedings

17. DUSIB filed CM 45667/2016 in W.P.(C) 6461/2000 seeking recall of the judgment and order dated 12th December 2002. Therein, DUSIB set out

the circumstances leading to the filing of the application and, in sum, submitted that the judgment dated 12th December 2002 was a nullity as it had been obtained by perpetrating a fraud on the Court. It was contended that with Mr. Khushiram having sought to withdraw the writ petition, having acknowledged receipt of compensation, he could not have continued to pursue the petition thereafter. Accompanying this application were CM 45668/2016 (for impleadment of the Petitioner in place of the late Mr. Khushiram who was the original petitioner) and 45669/2016 (for stay of the operation of judgment dated 12th December 2002). By the order dated 21st December 2017, CM 45668/2016 was allowed. It was noted by this Court that the subsequent purchaser, viz. the Petitioner, was already appearing in the matter.

18. A common order dated 28th February 2018 was passed in CM 33043/2016 (application by the Petitioner for ad interim stay of the operation of the letter dated 3rd August 2016 pending disposal of the petition) in W.P.(C) 7964/2016 and CM 45667/2016 in W.P.(C) 6461/2000. The said order reads as under:

“1. A common order is being passed in both the writ petitions.

2. By the present writ petitions, the petitioners seek a writ of mandamus directing the respondent to handover possession of the land belonging to the petitioners post passing of orders dated 03.06.2016 by the LAC on a representation made by the petitioners, a writ of certiorari is also sought to quash and set aside the letter dated 03.08.2016 by which the aforesaid order has been kept in abeyance.

3. We are informed by Mr. Chauhan, counsel for the DUSIB that an appeal has been filed before the Financial Commissioner

assailing the order dated 03 .06.2016, which would have a direct impact on the final decision in these writ petitions.

4. Mr. Sethi, learned Senior Counsel appearing for the petitioners submits that the appeal is not maintainable and the same is liable to be dismissed on this ground alone besides on the merits of the matter.

5. We have heard learned counsel for the parties and are of the considered view that before these two writ petitions are decided, the Financial Commissioner should be directed to decide the appeal which has been filed by the DUSIB. We are informed that the next date fixed in the matter is 24.04.2018.

6. With the consent of the parties, we cancel the date of 24.04.2018 and direct the parties to appear before the Financial Commissioner on 08.03.2018 at 2:30 PM to enable him to fix a date within one week thereafter for hearing the appeal. We are informed that the pleadings are already complete. The hearing would be concluded within two weeks and a final decision would be taken within four weeks thereafter. Parties undertake to cooperate with the Financial Commissioner and not to seek any adjournment. All legal objections of the parties including objections with regard to maintainability of the appeal is kept open. We make it clear that the Financial Commissioner shall decide the appeal unaffected by any observations made by this Court.

7. The Financial Commissioner shall forward copy of the order to this Court.

8. List for further hearing on 03.05.2018.

9. *Dasti.*”

19. The Court is informed that the proceedings before the Financial Commissioner (‘FC’) are still pending. In any event, in view of the reasons

hereafter explained, that need not hold up the decision in the present proceedings.

20. This Court has heard the submissions of Mr. Ravinder Sethi, learned Senior Counsel, and Mr. Sandeep Srivastava, learned counsel, both appearing for the Petitioner. The Court has also heard the submissions of Mr. Sanjay Poddar, learned Senior Counsel appearing for the LAC and Mr. Parvinder Chauhan, learned counsel appearing for DUSIB. Detailed written arguments have also been filed by Mr. Sandeep Srivastava. It must be noted that initially orders were reserved

Submissions on behalf of the LAC and DUSIB

21. Mr. Poddar, learned Senior Counsel appearing for the Respondent LAC, began his submissions by asserting that once the compensation amount was accepted, Mr. Khushiram could not have continued to challenge the acquisition proceedings. He relied in the decision in ***Shyam Telelink Ltd. v. Union of India (2010) 10 SCC 165*** and submitted that Mr. Khushiram could not approbate and reprobate. Since he had himself lost any title over the land in question after accepting compensation, he could not have conveyed any title, much less any valid title, to the Petitioner.

22. Secondly, it is submitted that Mr. Khushiram had himself committed a fraud upon the Respondents by not disclosing, prior to the final disposal of his writ petition by the judgment dated 12th December 2002, that he had accepted the compensation in May 2002 itself. Although he had filed CM 2833/2002, he never drew the attention of the learned Single Judge to its pendency at the time of the final disposal of the main writ petition. The mere

fact that the SLP filed against the said judgment was subsequently withdrawn, would not take away from the fact that a fraud was in fact perpetrated on the Court by concealing a relevant fact. Reliance is placed on the decision in *A.V. Papayya Sastry v. Government of Andhra Pradesh (2007) 4 SCC 221*.

23. It was further submitted by Mr. Poddar that the judgment in *Delhi Development Authority v. Sudan Singh (1997) 5 SCC 430*, which is sought to be relied upon by the Petitioner in support of his submissions, is not good law in view of the subsequent decision in *Abhey Ram v. Union of India (1997) 5 SCC 421*. It is contended that the mere filing of the application for withdrawal by Mr. Khushiram was in itself a clear admission that he had no right, title, or interest left in the land in question since he was prepared to accept compensation. Even a formal order by the Court accepting the said application was not necessary. Reliance is placed on the decision in *Shiv Prasad v. Durga Prasad (1975) 1 SCC 405*. Reliance is also placed on the decision of the Bombay High Court in *Anil Dinmani Shankar Joshi v. Chief Officer, Panvel Municipal Council AIR 2003 Bom 238* which followed the aforementioned decision in *Shiv Prasad (supra)*.

24. Mr. Poddar submitted that the possession of the land still remains with the Respondents and this is acknowledged by the Petitioner himself in view of the prayer made by him in his writ petition.

25. Mr. Chauhan for the DUSIB supplemented the above submissions. He pointed out that DUSIB was the beneficiary having stepped into the shoes of the Slum and JJ Wing and, therefore, had the locus standi to maintain the

applications. He urged that the applications be allowed and the judgment dated 12th December 2002 recalled. He prayed for dismissal of both writ petitions with exemplary costs.

Submissions on behalf of the Petitioner

26. On behalf of the Petitioner, Mr. Ravinder Sethi, learned Senior Advocate and Mr. Sandeep Srivastava, learned counsel, has submitted as under:

- (i) With the SLP filed by the LAC against the judgment dated 12th December 2002 having been dismissed as withdrawn and with no review having been filed by the LAC itself, the review petition filed by DUSIB being CM 45667/2016 in W.P.(C) 6461/2000 was not maintainable at the instance of DUSIB, which is not even a party to the main judgment. Relying on the decision in ***Meghmala v. G. Narasimha Reddy (2010) 8 SCC 383***, it is submitted that the filing of the review application after dismissal of the SLP amounts to an abuse of the process of the Court.
- (ii) Secondly, it is submitted that the review petition itself is highly belated as, way back on 31st March 2003, the LAC was aware that fresh acquisition proceedings in respect of the land of Mr. Khushiram was not tenable and they excluded the same from the subsequent notification under Section 6. Even the proceedings before the LAC, who issued notice on the representation of the Petitioner on 25th April 2016, revealed that the Respondents had knowledge of the subsequent transaction. A bald statement in the application for delay that a fraud had been detected and that they were not aware of it is,

therefore, not correct. In fact, no delay application was filed in the present case and that also was another ground for rejecting the review application which was filed only on 8th October 2016, much after the Petitioner's petition was filed and much after an appeal was filed by the Petitioner before the FC in September 2016 against the order of the LAC dated 3rd June 2016. Reliance is placed on the decision in ***Ragho Singh v. Mohan Singh (2001) 9 SCC 717.***

- (iii) On merits, it is submitted that the acceptance of compensation by Mr. Khushiram was inconsequential once the notification under Section 4 of the LAA stood quashed by this Court, which in turn stood affirmed by withdrawal of the subsequent SLP before the Supreme Court. The right to challenge an acquisition would survive notwithstanding that the land owner accepted the compensation. Reliance is placed on the decision in ***H.M.T. House Building Cooperative Society v. Syed Khader (1995) 2 SCC 677.*** Reliance is also placed on the decision in ***Sudan Singh (supra)*** where the Supreme Court affirmed the decision of the High Court giving direction to the land owners to return the compensation to have their land free from acquisition when the land acquisition notification was quashed. It is further submitted that this Court is bound by the earlier decision of the co-ordinate Bench in ***Praveen Jain (supra)*** which had held that the public purpose of rehabilitation of slums and JJ clusters was not a public purpose and therefore, the urgency clause was wrongly invoked. Therefore, even *qua* the LR's of the late Mr. Khushiram, this Court could have proceeded to quash the notification. Reliance is also placed upon the decisions in ***Greater***

Noida Industrial Development Authority v. Devendra Kumar (2011) 12 SCC 375; Competent Authority v. Barangore Jute Factory (2005) 13 SCC 477; and Kedarnath Yadav v State of West Bengal (2017) 11 SCC 601.

- (iv) The application for withdrawal filed by Mr. Khushiram, i.e. CM 2833/2002 was an application for conditional withdrawal and it was duly disclosed that he had accepted compensation for most of the *khasras* except one. There was no concealment of fact of the intention to withdraw the compensation. Moreover, said application was duly served upon the Respondents, including the Slum and JJ Department, the predecessor in interest of DUSIB. Consequently, it could not be said that fraud was perpetrated by Mr. Khushiram. The fact of withdrawal of the SLP, despite knowing the above fact, precluded the Respondents from now agitating that any fraud was practised by them.
- (v) In fact, it was the DUSIB which suppressed the material fact that a note had already been placed before the LG on 31st March 2003 and on which the LG had noted, on 10th December 2003, that possession of 331 *bighas* of land had already been taken even while the notification was quashed by the High Court. This was mentioned in the affidavit prepared by the Respondent which was served on the Petitioner but not filed in the Court.
- (vi) It is further submitted that DUSIB had no *locus standi* to file the review petition when the acquiring authority, i.e. the LAC, had not. It is further submitted that it is the DUSIB which had not come to the Court with clean hands and, therefore, its application should be

rejected. Reliance is placed upon the decision in ***K. D. Sharma v. Steel Authority of India (2008) 12 SCC 481***.

- (vii) It is submitted that the judgment in ***Abhey Ram (supra)*** had no bearing on the earlier decision in ***Sudan Singh (supra)***. The contention of the Respondents is, therefore, contended to be fallacious and untenable.
- (viii) The facts in ***Shiv Prasad (supra)*** were distinguishable from the present case. It in fact goes against DUSIB inasmuch as it was held that unless there was an order permitting withdrawal of the suit, the subsequent application under Order XXI, Rule 89 Code of Civil Procedure 1908 would not be maintainable. It is pointed out that it was DUSIB which sought to mislead this Court by not pointing out that Mr. Khushiram had, in his application itself, sought to conditionally withdraw his petition and in fact wanted to pursue the petition with respect to half share of Khasra No. 576 (3-16).
- (ix) It submitted that the judgment of the Supreme Court in ***Suraj Lamp Industries Pvt. Ltd. v. State of Haryana (2012) 1 SCC 656*** was prospective and, therefore, did not affect the valid title documents in favour of the Petitioner which were executed on 10th May 2004. Lastly, it is submitted that Prayer (b) in the petition has been misconstrued by the Respondents. The Petitioner is seeking possession of the land which has been illegally fenced off by the Respondents.

CM APPL. 45667/2016

27. This Court first would first like to take up CM 45667 of 2016 filed by

DUSIB in W.P. (C) 6461 of 2000 seeking recall of the judgment dated 12th December 2002.

28. What is not in dispute is that Mr. Khushiram had, even prior to the judgment dated 12th December 2002, filed an application being CM 2833/2002 stating clearly that he had been offered compensation in respect of the land in question. Although it is repeatedly urged that this was a conditional withdrawal, the actual prayer was to withdraw the challenge to the acquisition of the entire land except for a half share in Khasra No. 576 (3-16). It is not in dispute that in May 2002 the sons of Mr. Khushiram were paid the full compensation for acquisition of the land in question. The plea of 'conditional withdrawal', therefore, is neither here nor there.

29. That this application was pending before the Court is also apparent from the proceedings dated 28th August 2002 and 21st October 2002. Incidentally, Mr. Khushiram and the Petitioner are represented by the same lawyer, Mr. Sandeep Srivastava. He accepts that this application, perhaps drafted by him on behalf of Mr. Khushiram, was served on the counsel for the LAC. The suppression of material facts is not so much about what is averred in the application, but in suppressing the fact of pendency of such an application itself from the Court which finally decided the writ petition.

30. Having filed the above application, it was incumbent upon Mr. Khushiram, through his counsel, to inform the Court to not proceed with the final hearing as far as the writ petition of Mr. Khushiram was concerned. With the writ petitions having been treated as a batch, it was entirely possible that the factum of pendency of the above application was

overlooked by the counsel for the LAC and, therefore, the Court's attention was not drawn to it. However, as far as Mr. Khushiram was concerned, he was fully aware that full compensation for the land in question had been received. It was his case that this did not include a small in Khasra No.576 (3-16) in which he claimed a half share. In any event, there was absolutely no excuse for him not drawing the attention of the learned Single Judge who delivered the final judgment dated 12th December 2002 to this fact. It is this conduct of Mr. Khushiram which amounts to a deliberate suppression of a material fact from the Court. Having filed the application and not actually mentioning it before the Court for being taken up at the time of final disposal, Mr. Khushiram did play a fraud upon the Court.

31. Not only was compensation paid and received by Mr. Khushiram's sons but possession was also taken by the LAC of the land in question. This fact was not noticed by the learned Single Judge when the final judgment dated 12th December 2002 was delivered. Even if one presumes that because of the service of the advance copy of the application upon the counsel for the Slum and JJ Department, it should be presumed that even the Slum and JJ Department was aware of this fact, and even if one presumes that the records of the LAC would have clearly revealed this fact, what is stark is that nobody brought it to the notice of the learned Single Judge. In essence, therefore, all those who were parties to the petition chose not to draw the attention of the Court to this important fact. Nobody, and definitely not Mr. Khushiram or his successors in interest, can derive any advantage from the above conduct. This is too serious a matter as this was a land acquired for a public purpose. By withdrawing his challenge to the notification under

Section 4 of the LAA, Khushiram was also not questioning the public purpose served by such acquisition. Therefore, he could no longer take advantage of the decision of this Court in *Praveen Jain* (*supra*). Viewed from any angle, therefore, the judgment dated 12th December 2002, insofar as it pertains to Mr. Khushiram's petition, was obtained by practicing a fraud upon the Court. On this, there can be no doubt whatsoever.

32. Fraud vitiates all actions. In *Papayya Sastry* (*supra*), the Supreme Court observed as under:

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and *non est* in the eyes of law. Such a judgment, decree or order by the first Court or by the final court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, **at any time**, in appeal, revision, writ or even in collateral proceedings.”

[Emphasis supplied]

33. The following observations in *T. Vijendradas v. M. Subramanian* (2007) 8 SCC 751 are also pertinent in this regard:

“27.When a fraud is practised on a court, the same is rendered a nullity. In a case of nullity, even the principles of natural justice are not required to be complied with. (*Kendriya Vidyalaya Sangathan v. Ajay Kumar Das* and *A. Umarani v. Registrar, Coop. Societies*, para 65.)

28. Once it is held that by reason of commission of a fraud, a decree is rendered to be void rendering all subsequent proceedings taken pursuant thereto also nullity, in our opinion, it would be wholly inequitable to confer a benefit on a party who is a beneficiary thereunder.”

34. As far as the application for recall is concerned, therefore, the only

question that remains is whether it was maintainable on behalf of DUSIB and that too without filing an application for condonation of delay.

35. The sequence of events speaks for itself. Although a note was put up before the LG on 31st March 2003 pointing out that the compensation had been paid and the possession was also taken for the large chunk of land in question and the LG also prepared a note thereon subsequently in October 2003, and the amended notification issued, for some reason, the matter was not pursued further.

36. The Court would not like to enter into a discussion on why this happened and who was responsible for this lapse which no doubt calls for an inquiry. The fact remains, however, that fraud was played on the public exchequer with money for the valuable land in question being parted with and yet, the quashing of the notification not being questioned. There can be no question of any further *bona fide* purchase of the land in question by any alleged successors in interest of Mr. Khushiram. The acquisition of the land was for the benefit of the Slum and JJ Department, whose successor in interest is admittedly DUSIB. It will obviously be DUSIB which will be concerned about any fresh attempt at getting the acquisition proceedings in relation to the land acquisition declared as having lapsed, or any consequential direction for return of the land. Therefore, the *locus standi* of DUSIB to question the judgment dated 12th December 2002 is unquestionable. It does not matter that the LAC has not filed any review petition because the beneficiary was in fact DUSIB. Consequently, this Court negates the plea raised on behalf of the Petitioner questioning the *locus standi* of DUSIB in

filing the recall application.

37. The plea that no application for condonation of delay was filed along with the recall application by DUSIB deserves to be rejected in light of the facts and circumstances narrated hereinbefore. The extent of the fraud was not realised till 22nd July 2016 when a committee was constituted to examine the entire matter. Within three months thereafter, an application was filed in Mr. Khushiram's writ petition for recall of the judgment. In the circumstances, this Court does not consider this delay to be extraordinary. There is sufficient and satisfactory explanation for the delay in filing the application for recall of the judgment dated 12th December 2002. The SLP against that order having been dismissed as withdrawn with no decision on merits, also does not come in the way of this Court, having been satisfied of the fraud played on it, from interfering to correct the error.

38. The decisions cited by learned counsel for Vimal Jain are clearly distinguishable on facts. Here, the facts speak for themselves. It is imperative for this Court, in the interests of justice, to intervene to recall the order dated 12th December 2002. Consequently, the application is allowed and the order dated 12th December 2002 is hereby recalled.

W.P.(C) 6461/2000 and 7964/2016

39. The Court next proceeds to deal with both writ petitions. The issue is a common one viz., whether the Petitioner is entitled to a declaration that the land acquisition proceedings in respect of the land in question have lapsed? The reliance by Mr. Srivastava on the decisions in *H.M.T. House Building* (*supra*); *Sudan Singh* (*supra*); *Devendra Kumar* (*supra*); *Barangore Jute*

Factory (*supra*); and *Kedarnath Yadav* (*supra*) is to no avail. In each of those cases, no doubt the right of land owners to continue to challenge the land acquisition proceedings despite receiving due compensation was recognized. However, in the present case, what is distinctly different is that Mr. Khushiram did not want to pursue his petition challenging the land acquisition proceedings barring a small bit of a land in Khasra No.576 (3-16) which was a fraction of the total land which was sought to be acquired. Therefore, he gave up the right to challenge the acquisition proceedings. He did so because he had accepted the compensation and, therefore, was satisfied with it. This was not a case where he accepted the compensation under protest or even stated in his application that he intended to pursue the writ petition notwithstanding the fact that he had accepted the compensation. The clear statement in his application was that since he had accepted compensation, he did not wish to pursue the petition. These facts are so stark that hardly any comparison can be drawn with all the above cases where, despite accepting compensation, the land owners persisted with their challenge to the land acquisition proceedings. Further, the Court is unable to accept the plea that there was any *bona fide* action on the part of Mr. Khushiram or his successors-in-interest in the matter. Consequently, these arguments are to no avail whatsoever.

40. The Court firmly rejects the plea of Mr. Srivastava that it is DUSIB that had practised a fraud on the Court by suppressing the note dated 31st March and 27th August 2003 in the files of the LAC. It appears that these facts which were obviously known to some officials in the Department did not get unearthed until much later. Perhaps a detailed inquiry would reveal who all

were involved in practicing this fraud, but certainly neither the LR's of Mr. Khushiram nor his alleged successor-in-interest, i.e. the Petitioner, can derive any advantage of these wrongs. The Court sees merit in the contention of the Respondents that the LAC who subsequently passed the order dated 3rd June 2016 directing release of the land in question to the Petitioner on accepting return of the compensation amount also did so without the authority of law. The said order and those leading to it were in the teeth of the law. Land that stood vested in the State and for which compensation had already been paid on taking of physical possession was sought to be returned.

41. Again, the attempt to show that the judgment in *Suraj Lamp Industries (supra)* was prospective and, therefore, did not affect the documents of transfer of title from Mr. Khushiram to the Petitioner is to no avail. If Mr. Khushiram himself had no title to the land in question, he could not confer any valid title whatsoever on the Petitioner, whether it is by a Power of Attorney or by a Sale Deed. The fact remains that Mr. Khushiram himself had no valid title to the land in question and, therefore, the Petitioner cannot, by any stretch of imagination, claim to be a valid owner of the land in question.

42. In this context, the Court would like to refer to the observations of the Supreme Court in *Shiv Prasad (supra)* which read as under:

“12. Every applicant has a right to unconditionally withdraw his application and his unilateral act in that behalf is sufficient. No order of the Court is necessary permitting him to withdraw the application. The Court may make a formal order disposing of the application as withdrawn but the withdrawal is not

dependent on the order of the Court. The act of withdrawal is complete as soon as the applicant intimates the Court that he withdraws the application.”

43. This was further followed in the decision of the Bombay High Court in *Anil Dinmani Shankar Joshi* (*supra*):

“3. Order XXIII, Rule 1 of the Code of Civil Procedure permits the plaintiff at any time after the institution of the suit to abandon the suit or abandon a part of the claim in the suit against all or any of the defendants. No permission of the Court is necessary' for the plaintiff to unconditionally abandon his claim or any part of his claim against all or one or more of the defendants. Abandonment is complete as soon as the plaintiff informs the Court. No order of the Court is necessary though the Court often passes formal order recording the abandonment. In this connection, reference may be made to the decision of the Apex Court in *Shiv Prasad v. Durga Prasad* reported in (1975) 1 SCC 405 wherein the Court observed in paragraph No. 12 of the Judgment as follows :

“Every applicant has a right to unconditionally withdraw his application and his unilateral act in that behalf is sufficient. No order of the Court is necessary permitting him to withdraw the application. The Court may make a formal order disposing of the 'application as withdrawn but the withdrawal is not dependent on the order of the Court. The act of withdrawal is complete as soon as the applicant intimates the Court that he withdraws the application.

4. In my opinion, what is said by the Apex Court in respect of an application applies with equal force to the suit. Every plaintiff has an unconditional right to withdraw his suit unconditionally. The withdrawal would be complete as soon as the plaintiff files a purshis of withdrawal. The Court may pass a formal order recording the withdrawal and also make an order regarding costs, but, the withdrawal is not dependent on the

order of the Court. This could apply also where the plaintiff seeks withdrawal of the suit against one or more of the defendants and the withdrawal would be complete against those defendants as soon as the plaintiff files an application/purshis for withdrawal.”

44. It is, therefore, futile to contend on behalf of the Petitioner that since this Court did not allow the application of Mr. Khushiram to withdraw his writ petition, there was no question of entertaining any review petition. The fact of the matter is that the Court’s attention was not drawn to the pendency of the application seeking withdrawal and, therefore, the Court had no occasion to pass such an order.

45.1. The Supreme Court, in ***Ganpatbhai Mahijibhai Solanki v. State of Gujarat (2008) 12 SCC 353***, was called upon to consider a somewhat similar scenario where lands belonging to the appellants therein were deemed surplus under the provisions of the Urban Land (Ceiling and Regulation) Act 1976 (‘the Land Ceiling Act’). An appeal preferred by the landowners was dismissed and, thereafter, notifications under Section 10 (3) & (5) of the Land Ceiling Act were issued. Possession of the properties was taken and allotted to members of the weaker sections of society as envisaged under Section 23 of the Land Ceiling Act.

45.2. Another round of litigation was initiated by the appellants therein and in their appeal under Section 33 of the Land Ceiling Act, they obtained a judgment and order from the Appellate Authority to the effect that only part of the land earlier notified as surplus was now upheld as such. The respondent-State therein alleged that the Appellate Authority was not

informed about the outcome in the earlier appeal and that the subsequent order of the Appellate Authority was passed *ex parte*. Consequent to the repeal of the Land Ceiling Act in 1999, the State withdrew its writ petition filed in this regard and the allottees were issued eviction notices.

45.3. Ownership of the land then changed hands more than once. Meanwhile, a writ petition was filed by the allottees in which the State filed an affidavit declaring its acceptance of the *ex parte* order of the Appellate Authority by which the notification of surplus lands was quashed. A few days later, however, an application was filed by the State seeking recall of the order which recorded the State's wish to withdraw its writ petition challenging said *ex parte* order. It was pointed out by the learned counsel appearing for the State that at no stage did the appellants therein bring the notice of the authorities of the State or of the High Court to the fact that the order by which the lands were declared to be surplus had attained finality with the appeal against the same being dismissed. The Supreme Court, in dismissing the appeal and upholding the allotment, summed up the effect of a judicial order being obtained fraudulently in the following manner:

“It is now a well-settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same.”

46. With the fraud having been played on the Court, the fact remained that, unaware of the fact that Mr. Khushiram had received compensation in respect of the land in question and had thus expressed his desire not to pursue the petition, the learned Single Judge proceeded to pass an order quashing the LAC notification. Consequently, it is plain to this Court that

the order dated 12th December 2002 is *per incuriam* as far as the land in question is concerned. Once, pursuant to a valid Award, physical possession of the land in question was taken and the compensation paid, it vested in the State and enured to the beneficiary under the acquisition proceedings, viz. the Slum and JJ Wing and subsequently the DUSIB. With the fraud played on the Court being established without any doubt, the question of entertaining any plea on behalf of the Petitioner for a decision in respect of the small extent of land which he claims formed part of the acquisition proceedings and for which no compensation was paid, does not arise. Neither has the Petitioner come to the Court with clean hands nor in good time.

47. The Petitioner is admittedly not presently in possession of the land in question. The fencing of the land by DUSIB cannot, therefore, be deemed illegal. DUSIB is rightly in possession of the land in question.

48. As already noted, there were clear orders to return the compensation amount sought to be tendered by the Petitioner back to the DUSIB. However, when the cheque for a sum of Rs.3,26,30,694/- was sent to the Petitioner he refused to receive it. In the circumstances, it is directed that the said amount be kept in a separate fixed deposit by the LAC for a period of six months from 1st December 2018. If on or before 31st May 2019, the Petitioner fails to come forward to receive the said amount, it need not be kept in a fixed deposit thereafter and it will be deemed that the Petitioner has given up his claim in relation thereto.

49. W.P.(C) 7964/2016 and 6461/2000 are accordingly dismissed with costs

of Rs.50,000/- in each case. The entire cost will be paid by the Petitioner to the Respondents within a period of eight weeks from today. The pending applications are disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 26, 2018

rd

