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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM (M) 236/2019**

PROF DAKSH LOHIYA & ORS Petitioners

Through: Ms. Geeta Luthra, Sr. Advocate with
Mr. Prateek Yadav, Advocate (M-
9899146516)

versus

**LAND ACQUISITION COLLECTOR (CENTRAL) &
ORS** Respondents

Through: Ms. Indira Karki, Advocate on behalf
of Mr. Yeeshu Jain, Advocate for R-1
(M-9315666037)
Mr. Amit Seth, Advocate for R-2 (M-
9811050339)
Ms. Vibha Mahajan Seth, Advocate
for R-3 (M-9810702410)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **13.02.2020**

CM APPL. 5482/2020 (for delay)

1. This is an application for condonation of 40 days delay in re-filing the application for substitution as legal representatives of Petitioner No.3. The delay is condoned. Application is disposed of.

CM APPL. 5481/2020 (for LRs)

2. This is an application for bringing on record the legal heirs of Petitioner No. 3. The legal heirs are permitted to be brought on record. Amended memo of parties be filed within four weeks, if not already filed.

3. Application is disposed of.

CM (M) 236/2019

4. This petition seeks the setting aside of the impugned order dated 7th

December, 2018 and for clarifying that the references LAC 3135/2016 (*hereinafter*, “3135”) and LAC 3136/2016 (*hereinafter*, “3136”), being distinct and independent references, be decided on their own merits. It is submitted that the evidence in 3136 has already concluded and the evidence in 3135 is still underway and may take some time.

5. The award in question in the present case is Award No.3/2002, concerning properties in Hauz Qazi, Delhi, wherein both the Petitioners and Respondent No.2 – Ms/ Kailash Traders, through its partners, have rights. There were three references arising out of the said award, being LAC 3135/2016, LAC 3136/2016 and LAC 2/2015. Vide order dated 27th February, 2007, a Id. Single Judge of this Court in CM(M) 1277-80/2006 had directed that the two references under Section 18 of the Land Acquisition Act, 1894 and one under Sections 30 and 31 of the Land Acquisition Act, 1894 be heard simultaneously. The said order reads:

“1. With consent of parties, the petition stands disposed of directing that the Section 18 reference petition of the petitioner as also of respondent no.2 as also the reference petition under Section 30 read with Section 31 of the Land Acquisition Act 1894 pertaining to award no.3/2002 dated 25.5.2002 in so far it has acquired a part of property bearing municipal no.3425 to 3432, Gali Hakim Baqa, Hauz Qazi, Delhi-110006 would be decided simultaneously by the learned Additional District Judge before whom the two Section 18 petitions have been referred to as also reference under Section 30 read with Section 31 of the Land Acquisition Act 1894 is pending.

2. I am informed by learned counsel that all three petitions/applications have been assigned to the same court and currently are pending consideration before Sh. Yashwant Kumar, ADJ., Delhi.

3. *I direct that in terms of the consent of the parties, the Section 18 petitions/applications of the petitioner as also respondent no.2 as also the reference petition under Section 30 read with Section 31 of the Land Acquisition Act 1894 be decided simultaneously.*

4. *In that view of the matter, counsel concede that no useful purpose would be served in deciding the legality and validity of the impugned order dated 12.7.2006.*

5. *Copy of this order be supplied dasti to learned counsel for the parties."*

Thus, there were a total of three petitions which were directed to be heard together by the same ADJ.

6. Subsequently, however, a settlement was entered into between the Petitioners on the one hand and Respondent No.2 on the other. In view of the settlement entered into between the parties and recorded on 19th November, 2015, the reference under Sections 30 and 31 has been disposed of. As per the said settlement, the parties have agreed to their respective shares and thus the *inter-se* dispute between the private parties has been resolved.

7. Reference No. 3136 proceeded further and the matter was pending for judgment. In the meantime, the impugned order dated 7th December, 2018 came to be passed, which reads as under:

"It is brought to the notice by the parties that in CM (M) No. 1277-80/2006 and CM No. 11285/2006 vide order dated 27.02.2007 Hon'ble High Court of Delhi has directed simultaneous decision of three reference petition two of which are under u/sec. 18 of Land Acquisition Act, 1894 which are submitted as file no. 3135/16 filed by M/s. Kailash Traders and another file number is 3136/16 filed by Dr. Daksh Lohiya & Ors. both pending before the present Court which had to be

decided alongwith reference petition u/sec. 30-31 of Land Acquisition Act, 1894. Further, copy of order in LAC no. 02/15 titled UOI v. Ishwaku Lohiya dated 19.11.2015 is filed wherein the parties therein had settled matter by way of compromise before ld. ADJ. It is submitted by petitioners that the said compromise is same petition u/sec. 30/31 of LA Act which had to be decided simultaneously with two petitions u/sec. 18 of LA Act. Hence simultaneous decision of above said reference Petition No. 02/15 is further not required in view of being already disposed. Both the respondents are not able to state-further on the facts regarding such disposal of reference petition u/sec. 30-31 referred above. Hence only two reference petition no. 3135-3136 both of the year 2016 are to be decided together.

Let clarification be submitted by the petitioner regarding total constructed covered area and total area of land under consideration in present reference petition filed by him for his claim.

*Put up for further arguments on **15.01.2019.***”

8. Ms. Geeta Luthra, ld. Senior Counsel appearing for the Petitioners, submits that though, initially, the disputes between the parties were directed to be taken together and decided simultaneously, in view of the fact that the *inter-se* disputes between the parties in LAC 2/2015 are now settled, as also the fact that there is a considerable delay in the evidence being adduced in 3135, she submits that 3136 be disposed of on its own merits.

9. Mr. Amit Sethi, ld. counsel for Respondent No.2 who has filed the reference in 3135, submits that he has no objection if the two references are segregated and they proceed on their own merits.

10. Ms. Vibha Mahajan Seth, ld. counsel for Respondent No.3, submits that the reason why these three matters were consolidated was because there was evidence which would need to be read from one matter in the other. She

further submits that these references relate to the same award and the same property which is why they were to be heard simultaneously and disposed of together.

11. Heard counsel for the parties. Insofar as 3135 is concerned, the same was subject matter of CM(M) 357/2018, which has been disposed of by this Court vide order dated 14th January, 2020. The said order reads:

“1. By the impugned order dated 18th December, 2017, the Petitioner’s application for filing additional documents, which included sale deeds of similar properties for establishing the market value of the property, has been rejected as the same is belated.

2. It is seen from the impugned order that all the additional documents are registered sale deeds which are exhibited, subject to mode of proof and admissibility. There is no dispute as to the fact that copies of these registered sale deeds are to be produced by the government.

3. Subject to the objections of the ld. counsel for the Respondents, with regard to the contents of these documents and their effect on enhancement of compensation, being left open, it is directed that the documents shall be taken into consideration by the Reference Court while adjudicating the issue of enhancement of compensation.

4. If the Respondents, who are Petitioners before the Reference Court, wish to lead additional evidence, they are permitted to do so. Since the reference has been pending for several years, it is directed that the reference shall be disposed of expeditiously. The impugned order dated 18th December, 2017 stands modified accordingly.

5. With these observations, the petition and all pending applications are disposed of.”

12. A perusal of the above order shows that the Union of India is intending to file additional documents in the said matter and the same was

permitted in terms of the said order. Thus, there can be some delay in the decision in 3135.

13. Insofar as the order dated 27th February, 2007, passed in CM(M) 1277-80/2006 is concerned, the said order does not consolidate all the three references but merely directs that they should be simultaneously disposed of by the same Judicial Officer since they all relate to the same property and the same award.

14. The apprehension of the DMRC can be assuaged by directing that the evidence, if any, in 3136 may also be taken into consideration in 3135. Moreover, there is a change in circumstances since the order dated 27th February, 2007 was passed. At present, there is no useful purpose being served by making one private party who is entitled to compensation wait for evidence to be led in the other reference. If 3136 is decided earlier, the judgment/order which would be passed in the said reference can be referred to and relied upon in the reference in 3135 as well. Considerable time having lapsed and there being subsequent developments in these matters, the order dated 27th February, 2007 need not continue to hold the field.

15. Accordingly, it is directed that LAC 3136/2016 be decided on its own merits. To the extent that the records of the said petition would be relevant for the decision in LAC 3135/2016, the concerned Reference Court is permitted to call for the records of LAC 3136/2016 for deciding LAC 3135/2016. The impugned order is modified in the above terms and the petition is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH, J

FEBRUARY 13, 2020/Rahul/C