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

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Date of Decision: 04.10.2021

% **W.P.(C) 4641/2021 & CM APPL. 14282/2021**

SHRI B S TOLANI

..... Petitioner

Through: Mr. Anand Yadav, Advocate.

versus

LAND ACQUISITION COLLECTOR (SOUTH) Respondent

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to seek writ to a quash and set aside the award No. 05/2013-14 dated 27.12.2013 inasmuch, as, the Land Acquisition Collector (LAC) has fixed the market value of the land of the petitioner at the minimum rate fixed by the Government for agricultural land, i.e. at the rate of Rs. 53 lacs per acre. The petitioner seeks a direction to the respondent to refix the market value of the land of the petitioner while taking into consideration that it is urbanised land, and land use is non-agricultural/ urban/ residential, after giving the opportunity to the petitioner to file his claim for fixing market value, and after granting an opportunity of hearing.

2. The background facts of the case are that the land in question was initially notified under Section 4 of the Land Acquisition Act, 1894 on 13.11.1959. After the said notification, the petitioner purchased the land on 07.06.1960 in an auction. On 23.05.1963, the Delhi Municipal Corporation – with prior sanction of the Government of India, issued a notification under Section 507 of the Delhi Municipal Corporation Act, 1957, whereby, Mehrauli – where the land in question is situated, ceased to be a rural area and it was included and form part of the urban area.

3. Thereafter, on 02.01.1969, the notification under Section 6 of the Land Acquisition Act was issued in respect of land measuring to 242 bighas in Mehrauli, which included the land in question.

4. On 17.01.1983, Award No. 60/1983 was announced by the LAC in respect of land falling in Mehrauli, Delhi, including the land in question.

5. The acquisition of land was challenged by the petitioner by filing W.P. (C) No. 753/1983 tiled ***B S Tolani Vs. UOI.***

6. On 23.09.1986, this Court quashed the notification issued under Section 6 of the Land Acquisition Act in respect of the land of the petitioner, and also quashed Award No. 60/1983 dated 17.01.1983 qua the petitioner.

7. On 22.09.1995, by a notification issued by the Government of India, Ministry of Urban Development, area admeasuring 25.48 Hactares (62.39 acres) falling in Division F Zone of the master plan, bounded by Sultan Garhi Tomb in the North, 75 meter wide Road in the North-East (Mehrauli-Mahipalpur) and rural area in the South and West, was changed from “Rural Zone” to “Residential” use. The petitioner states that the land in question is located in Zone F and is near Mehrauli-Mahipalpur Road. The petitioner

claims that the land use of the petitioner's land is residential as per master plan, and the same forms part of the urban area.

8. On 26.11.1997, the L&B Department denotified various pockets and colonies under section 12 of the Delhi Development Act, 1957. Vasant Kunj and Mehrauli are mentioned at serial No 174. Therefore, the petitioner claims that the land of the petitioner came under the jurisdiction of the Delhi Municipal Corporation.

9. On 24.01.2008, the minimum rate of agricultural land for acquisition was fixed at Rs. 53 lacs per acre. The circle rates were increased on 16.11.2011 and 04.12.2012, but circle rates for agricultural land were not increased by the Government.

10. In respect of adjoining land belonging to one Shri Hansraj Gupta – possession of which was taken over in pursuance of the same acquisition proceedings (as were undertaken in respect of the petitioner's land), the respondent was directed to restore possession to Shri Hansraj Gupta. Since possession of the land was not restored, he preferred CCP No. 349/2011.

11. As a result of the said action, the respondent issued a fresh notification to acquire the land, including that of the petitioner, on 21.07.2011. After inviting objections under Section 5A of the Land Acquisition Act, notification was issued under Section 6 of the Act on 19.07.2012. Eventually, the impugned award dated 27.12.2013 was passed bearing Award No. 05/2013-14 determining the compensation payable to the petitioner.

12. The Award shows that the LAC proceeded on the basis of the rate fixed for acquisition of agricultural land at Rs. 53 lacs per acre. The

petitioner, thereafter, preferred W. P. (C) No. 3049/2014 before this Court challenging the award No. 05/2013-14 dated 27.12.2013, as also the acquisition proceedings, by challenging the notification dated 21.07.2011 under Section 4 of the Act, and notification under Section 6 dated 19.07.2012. The said writ petition was dismissed by a detailed judgment rendered by this Court on 21.12.2018. The reliefs sought by the petitioner are set out in the initial part of the said judgment, which is placed on record, and the same reads as follows:-

"That in view of the above, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

Issue a Writ, Order or Direction in the nature of Certiorari thereby Quashing the Award passed by the Respondent under Section 11 of the Land Acquisition Act, 1894 bearing no. 05/2013-2014 dated 27.12.2013 whereby the Respondent wants to acquire the land of the Petitioner admeasuring 34 Bighas 18 Biswas (35,172 Sq. Yards) in Mehrauli.

Issue a Writ, Order or Direction in the nature of Certiorari thereby Quashing all other related notifications under Section 4 dated 21.07.2011 and Section 6 dated 19.07.2012 under the Land Acquisition Act, 1894 and the Alleged Notice allegedly sent to the Petitioner under Section 9 and Section 10 of the Land Acquisition Act, 1894 dated 14/11/2013;

Issue of a Writ, Order or Direction in the Nature of Mandamus thereby directing the Respondents not to interfere with the peaceful possession of the Petitioner in the land of the Petitioner admeasuring 34 Bighas 18 Biswas in Mehrauli.

Issue such other writ, order or a direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and

Also award costs of the present proceedings in favour of the petitioner and against the respondent" (emphasis supplied)

13. The petitioner has now preferred the present writ petition for the reliefs we have already taken note of hereinabove.

14. The submission of Mr. Yadav – learned counsel for the petitioner is primarily premised on the judgment dated 07.05.2004 rendered by the Division Bench of this Court in **Smt. Krishna Kumari Uppal Vs. Union of India and Others**, W. P. (C) No. 768/2004. In this case, the land was sought to be acquired by resort to the emergency provision, i.e. by invoking Section 17 of the Land Acquisition Act, which obliges the LAC to tender 80% of the estimated compensation to the land holder at the time of taking possession of the land. The right to file objections under Section 5A is dispensed with. The petitioner in the cited case– who was the owner of plot admeasuring 470 sq. yards situated in Sunlight Estates, New Delhi, approached the Court upon issuance of the notification under Section 4 read with Section 17 of the Land Acquisition Act on 10.12.2001. He challenged the acquisition of his land. The plot was sought to be acquired for the purpose of Bhikaji Cama Place District Centre. This challenge was disposed of by this Court on 20.11.2003, as not pressed.

15. The judgment records that the cause of action for filing the writ petition being W.P.(C.) No. 768/2004 arose, since the respondent did not take steps for payment of compensation to the petitioner within the time prescribed for taking possession in the earlier judicial proceedings. The relief sought by the petitioner primarily was that the respondent should not take steps for taking possession of the property without following due

procedure of law provided under Sub Section (3A) of Section 17 of the Land Acquisition Act. The petitioner also sought a direction to the respondent to make payment of 80% of the compensation to the petitioner prior to taking possession of the property, as envisaged under the Land Acquisition Act. The petitioner also sought a direction to the respondents to assess the value of the premises and buildings constructed thereon, after taking into consideration the fact that the property situated in a commercial area and to determine the compensation of the premises and buildings constructed thereon in accordance with the provisions of the Land Acquisition Act.

16. During the pendency of the writ petition, the respondent moved an application seeking permission to pass the award before 09.05.2004, since the declaration under Section 6 had been issued on 10.05.2002, and the award had to be made within a period of two years thereafter, failing which the acquisition would have lapsed.

17. This Court observed that the Land Acquisition Collector is obliged to act in a reasonable manner and he cannot arbitrarily determine the compensation offered to the land owner. We may quote the relevant extract from this decision which reads as follows:-

“14. We may indicate that when the exercise so done is preposterous and absurd, which may be termed as arbitrary, the Court in a given case may have to intervene and in exercise of its power under Article 226 of the Constitution of India, issue necessary directions to the respondents to remedy the farcical situation. The submission of the respondents that it may open pandora box is an argument in despair; an argument in terrorem. No doubt it is for the LAC to estimate the compensation under this provision and normally Courts are not to interfere at this stage. Courts are conscious of their self

imposed limitation. But that does not mean that he is free to fix any farcical figure in the name of estimated compensation and offer pittance to the land owner thereby making mockery of the provision. Courts shall intervene only in such an eventuality.

15. While discharging such a function, the LAC is supposed to act reasonably like any other administrative authority. Fairness in action is the hallmark of good governance. When it appears to the Court that the exercise of functioning is irrational, improper and lacs fairness attracting Wednesbury's principle, the Court would not be powerless to intervene. Article 226 gives wide power to the High Courts to issue writs in appropriate cases. There may be self-imposed limitations and restraints in exercise of this power. Normally, it would not be for the High Court to entertain the writ petitions against the exercise of power of the LAC in estimating the compensation and tendering 80% thereof to the landowner. However, when it is found that what is offered is a mere pittance and abnormally low and unreasonable that it shocks the conscience of the Court and gives an impression that the land owner is dispossessed of his land without paying any compensation worth the name, such an action would be pen to judicial review. In that case it cannot be solace to the land owner that proper compensation would be fixed at the time of making the Award which may be in distant future, as law gives two years to the LAC to make an Award from the date Declaration under Section 6 of the Act is made. After all right to property is still a Constitutional right guaranteed under Article 300A of the Constitution which mandates that no person shall be deprived of his property save by authority of law. The Land Acquisition Act is one such law which provides for procedure and the manner in which a person can be deprived of his property. It puts an obligation on the State to give fair market compensation to the person who is deprived of his property. This right to receive compensation is a valuable right given under the Statute. Even at the time of estimating the compensation, the LAC is under obligation to undertake reasonable exercise.

16. X x x x x

17. *In the instant case, the LAC, for the reasons best known to him, took shelter of Circular dated 16th August, 2001 estimating the compensation at a paltry sum of Rs.2 lac and offering 80% thereof to the petitioner. Such a compensation for a plot of 470.5 Sq.yards would work out to approximately Rs.45 per.sq.yards. Arriving at such an estimation for the land in Bhikaji Cama Place is nothing but a farce. It is not understood as to how the LAC could even imagine such a compensation even when it was only an estimated compensation. Such an exercise on the part of the LAC was illusory, make belief and sham. It would also be apparent from the fact that now even as per his proposed Award, he is proposing Rs.11,550/-per.sqr.mtrs. for this land (this by... o means to be understood to say that we are expressing any opinion about the justification of this basis as the LAC is yet to draw final Award and to consider as to whether to take into consideration the market rate fixed by Circular dated 16th April, 1999 for residential property or commercial property or to take into account any other rates on the basis of evidence furnished by the petitioner). Even the rate proposed now, namely, Rs.11,550/-per sqr.mtrs. as compared to the estimated rate of Rs.45 sq. yards is a clear indication that the earlier exercise done by the LAC was totally arbitrary and without application of mind, mechanically relying upon Circular dated 16th August, 2001, without even caring to notice that it had no application to the subject land.*

18. *However, although the compensation tendered under Section 17 (3A) was abnormally low, it is not necessary to deal with this issue any further in view of what is now sought to be proposed by the LAC himself, as noted above. The compensation now proposed to be offered, in view of the aforesaid scenario, would not be less than Rs.1,10,94,724/- and may be higher if the petitioner is able to produce relevant evidence. If such evidence is acceptable to the LAC, the compensation arrived at in this manner cannot be said to be shockingly or abnormally low. While saying so, we are also*

taking into consideration that the Award is to be rendered by the LAC in immediate future, i.e. by 9th May, 2004 and thus the petitioner would be getting the amount as per the Award within few days.

19. In these circumstances, this writ petition is disposed of with the following directions:

(A) The LAC shall make and publish his Award by the stipulated date after taking into consideration the evidence produced by the petitioner.

(B) Compensation that would be determined as per his Award would be paid to the petitioner immediately on the passing of the said Award.

(C) The petitioner would be at liberty to receive the said compensation subject to her right to seek reference under Section 18 of the Act.”

18. From the above, it would be seen that the Court rejected the submissions of the respondent that the writ petition would not lie against the Land Acquisition Collector in the matter of assessment of compensation that he proposes to offer to the land owner, if the said assessment is arbitrary and unreasonable, and shocks the conscience of the Court. The basis on which, he assesses the compensation has to be fair and reasonable. While examining the facts of the case before it, this Court observed that the compensation offered translated to about Rs. 45 per square yards in respect of an urbanized land. Paltry amount of Rs. 2 lacs was offered towards 80% of the compensation to the land owner/ petitioner while invoking Circular dated 16.08.2001, which had been issued in respect of agricultural lands.

19. At the same time, the Court noticed that as per the proposed award, the Land Acquisition Collector was proposing to offer Rs. 11,550/- per

square metre, which, in any event, was not final and binding on the petitioner. This Court observed that the rate proposed now, namely, Rs.11,550/- per square metre, as compared to the estimate rate of Rs. 45 per square yard is a clear indication that the earlier exercise done by the LAC was totally arbitrary and without application of mind by mechanically relying upon Circular dated 16.08.2001, without even caring to notice that it had no application to the subject land.

20. From the above extract, it would be seen that the Court directed the LAC to publish his award by the stipulated date after taking into consideration the evidence produced by the land owner/ petitioner. The compensation was directed to be paid immediately upon passing of the award and it was left to the petitioner to seek a reference under Section 18 of the Land Acquisition Act, in case the petitioner was aggrieved by the determination of compensation by the LAC.

21. Mr. Yadav submits that in the present case, the fact that the land has been urbanized has been ignored, and compensation has been assessed/offered by the Collector on the basis that the minimum rate at which agricultural lands are acquired in Delhi, is Rs. 53 lakhs per acre.

22. Mr. Yadav has also placed reliance on L.A.APP. 97/2018 titled ***Union of India Vs. M.L. Gupta & Ors.***, decided on 07.06.2019 by learned Single Judge to submit that circle rates cannot be the basis for determining compensation under the Land Acquisition Act, and circle rates are only for the purpose of determination of stamp duty under the said Act.

23. He further sought to place reliance on an order dated 16.07.2017 passed by the ADG-I/South-West dated 16.07.2014, whereby, the market

value of land falling in villages Nanak Heri and Badusarai had been assessed at Rs. 2,93,00,000/- per acre as on the date of issuance of the notification under Section 3(1) of the Petroleum and Minerals Pipelines (Acquisition Of Right Of User in Land) Act 1962. The land was notified on 22.05.2009 under Section 3(1) of the aforesaid Act, which is equivalent to the notification under Section 4 of the Land Acquisition Act.

24. In these circumstances, Mr. Yadav seeks to rely upon the aforesaid judgments to press the reliefs taken note of hereinabove.

25. Mr. Yeeshu Jain – who appears for the respondent, has raised the preliminary objection to the maintainability of this petition, on the ground that the petitioner cannot have a second bite of the cherry. He had earlier challenged – not only the acquisition, but also the same award while preferring the writ petition being W.P. (C.) No. 3049/2014. All pleas were open to the petitioner to take when he preferred the said writ petition. The writ petition was contested by the respondents and by a detailed judgment running into 51 pages, the same was dismissed. It is, therefore, not open to the petitioner to, at this stage, again approach this Court to assail the same award. He further submits that the present petition is highly belated, since the land in question was acquired by the award dated 27.12.2013. Thirdly, he submits that the petitioner has statutory remedy available under Section 18 of the Land Acquisition Act and, therefore, in the face of the alternative efficacious statutory remedy available to the petitioner, the petitioner cannot invoke the jurisdiction of this Court. He cannot invoke the jurisdiction of the Court under Article 226 of the Constitution, only because he has not availed of, and may not be in a position to avail of the alternative efficacious

statutory remedy due to the bar of limitation.

26. Insofar, as, the decision in *Smt. Krishna Kumari Uppal* (supra) is concerned, Mr. Jain points out that the said decision was rendered when the award had not been made, and on account of the circumstance that the emergency provision under Section 17 had been invoked along with Section 4 of the Act. Thus, it was required of the LAC to deposit of 80% of the compensation before taking possession of the land.

27. Having heard learned counsels, and perused the record, we are of the considered view that there is no merit in the present writ petition, and the same is clearly barred not only by the principles of Order II Rule 2 CPC/constructive *res judicata*, but also by delay and laches.

28. As noticed hereinabove, the petitioner had preferred the earlier writ petition challenging, inter alia, the Award No. 05/2013-14 dated 27.12.2013, which is also the subject matter of the present writ petition. All such pleas, as are now sought to be raised by the petitioner, were open to be raised, when the earlier writ petition was preferred. The petitioner ought to have raised those pleas, and not having done so, is clearly barred from doing so at this stage. The petitioner cannot be permitted to raise these pleas in these proceedings as an afterthought, to press the same relief, premised on the same cause of action. Secondly, the present petition is also highly belated, since it seeks to assail the Award dated 27.12.2013 in the year 2020.

29. Reliance placed by Mr. Yadav on *Krishna Kumari Uppal* (Supra) is misplaced in the facts and circumstances of the present case. Firstly, in the present case, the emergency provision of Section 17 of the Land Acquisition was not invoked. The award was rendered after following due process of

granting opportunity to the petitioner under Section 5A to raise his objections, and, thereafter the declaration under Section 6 of the Land Acquisition Act was issued. The petitioner continued to remain in possession and he was not dispossessed summarily. Only thereafter, the Award was rendered after notice to the land owners. It was for the petitioner to raise his submissions before the Land Acquisition Collector. Secondly, when **Krishna Kumari Uppal** (Supra) was assailed, the award had not been made. In the present case, the award has already been made as taken note of hereinabove. Even in **Krishna Kumari Uppal** (Supra), it was left to the petitioner to raise his grievances with regard to computation of compensation as offered by the LAC by preferring a reference under Section 18 of the Land Acquisition Act. The pleas raised by the petitioner in relation to compensation offered by the Land Acquisition Collector were, in our view, open to be raised by him in Reference Proceeding under Section 18 of the Act.

30. We may also observe that in the facts of this case, the compensation assessed and offered by the LAC is not such that it would shock the conscience of the Court. Whether, or not, the rates notified for acquisition of agricultural lands in Delhi would be applicable, is an issue, which should have been raised before the LAC, and could be raised before the Reference Court.

31. In view of the aforesaid, reliance placed on **Krishna Kumari Uppal** (Supra) – in facts of this case, is misplaced.

32. For the aforesaid reasons, we find no merit in this petition and the same is, accordingly, dismissed.

VIPIN SANGHI, J

JASMEET SINGH, J

OCTOBER 04, 2021

aks/KD

