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

+ **W.P.(C) 15506/2023**

JAIPAL (DEAD) THROUGH LRS.

.....Petitioner

Through: Dr. Subhash Vijayran, LR-2 of
petitioner in person.

versus

GOVT. OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Sanjay Kumar Pathak, Standing
Counsel with Ms. K.K. Kiran Pathak,
Mr. Sunil Kumar Jha, Mr. Mohd.
Sueb Akhtar and Mr. Divakar Kapil,
Advocates for R-1/LAC.

Ms. Prabhsahay Kaur, Standing
Counsel with Ms. Kamna Singh
(Panel Counsel), Mr. Bir Inder Singh
Gurm and Mr. Aditya Verma,
Advocates for DDA.

Mr. Sumit Rana, Advocate for R-4
and LR-2 of R-6.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

14.07.2025

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1. Heard the L.R. No.2, who appears in person and represents the other
LRs of the petitioner as well, as also the learned counsel for the respondents.
2. Proceedings of this petition filed under Article 226 of the Constitution
of India have been instituted with the following prayers:-

*“5. **PRAYER**: On the basis of the above premises, it is most humbly
and respectfully prayed that this Hon'ble Court may be pleased to
issue a Writ of Mandamus or any other appropriate Writ(s) or
Order(s):*



5.1. Main Prayer: *Direct Respondent No. 2, Land Acquisition Collector (N-W), to perform his statutory function / duty, within a specified time, u/S.16 of the Land Acquisition Act, 1894, and take possession of the unpossessed land comprising of Khasra No(s). 21//22 (measuring 04 bighas 16 biswas), 36//24 (measuring 04 bighas 16 biswas), 37//2 (measuring 04 bighas 12 biswas), 37//3/1 (measuring 02 bighas), 41//4 (measuring 04 bighas 16 biswas), 41//7 (measuring 04 bighas 16 biswas), 41//8 (measuring 04 bighas 16 biswas), 41//13/3/1 (measuring 01 bighas 14 biswas), total measuring 32 bighas 06 biswas, situated in the Revenue Estate of Village Kirari, Suleman Nagar, Patti Nithari, North-West Delhi, acquired vide Award No. 25/2005-06/DC/NW, and disburse its compensation to the parties as per the 19.05.2006 Judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 7040/2000.*

5.2. Alternative Prayer: *In case Respondent No.2, Land Acquisition Collector (N-W), is not inclined to take possession of the above-mentioned 32 bighas 06 biswas of acquired land (and / or disburse its compensation), as prayed in the 'Main Prayer' above, then:*

Direct Respondent No. 2, Land Acquisition Collector (N-W), to perform his statutory function / duty, within a specified time, u/S.48 of the Land Acquisition Act, 1894, and release the land from acquisition proceedings, and also award compensation to the parties as per u/S.48 of the Act, for the damages incurred by the parties, on account of the land being under acquisition proceedings since 21.03.2003, when Notification u/S.4 the Act was issued."

3. At the outset, learned counsel representing the Land Acquisition Collector and other private respondents have argued that the instant writ petition is not maintainable for two reasons, (i) that in an earlier litigation initiated by the Predecessor-in-interest of the petitioner Late Jaipal, this Court has held that he had failed to establish his right or title in the land in question and that he also had failed to establish the fact that he was a recorded owner in the revenue records and (ii) the prayer for taking possession of the land which is subject matter of the notifications under



Sections 4 and 6 of the Land Acquisition Act, 1894 cannot be granted by the Court in the sense that the acquiring authority cannot be compelled by an order of the Court to take possession of any such land.

4. The dispute in this petition has been raised in respect of certain Khasra Numbers admeasuring 32 Bighas and 6 Biswas of land situate in Revenue Estate of Village Kirari, Suleman Nagar, Patti Nithari, Delhi. It appears that a large chunk of land was notified under Section 4 of the Act, 1894 on 21.03.2003 whereupon notification under Section 6 was also issued on 19.03.2004. Award in respect of the said notification was also made on 06.02.2006. However, possession of the entire land, which was the subject matter of the notification could not be taken. So far as the petitioners are concerned, it has been asserted that out of approximately 57 Bighas of land, though award was declared in respect of the entire land, however, possession was taken only in respect of 25 Bighas and 9 Biswas of land, whereas possession in respect of 32 Bighas and 6 Biswas of land remained to be taken and accordingly, a prayer has been made in this petition to direct the Acquiring Authority/Land Acquisition Collector to take possession and pay the compensation to the petitioners.

5. In respect of the same land, predecessor-in-interest of the petitioner namely, Late Jaipal, earlier filed a W.P.(C) 817/2016 with the following prayers:-

“A) declaring the proceedings vide Award no. 25/2005- 06/DC/NW dated 06.02.2006 under Land Acquisition Act 1894 for acquisition of land of Village Kirari Suleman Nagar Patti Nithari, Delhi, under Item No. 40-42, as "deemed to be have lapsed" in terms of Sec 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, qua the agricultural land.



i) Under Khasra No. 4//10(4-16), 5//6(4-10), 9//7(4-16), 9//16MIN(3-07), 9//25(3-14) and 17//5(4-6) all total measuring 25 bigha and 09 biswas wherein the petitioner has undivided share measuring 4 bighas 9.3/40 biswas, ii) under Khasra No. 21//22(4-16), 36//24(4-16), 37//2(4-12), 37//3/1(2-00), 41//4(4-16), 41//7(4-16), 41//8(4-16), 41//13/3/1(1-14) total measuring 32 bigha and 6 biswas wherein the petitioner has undivided share measuring 1 bigha and 5 biswas.

B) Direct the respondent no. 4 to make necessary entries in the revenue record as to the cancellation of award no. 25/2005-06/DC/NW and also make necessary entries involving the share of the petitioner in the revenue records as per the /corrigendum dated 28.03.2007 in Khata Khatauni bearing no. 24/23 min of Village Kirari Suleman Nagar, Delhi.”

6. The said writ petition thus sought benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In the proceedings of this writ petition bearing W.P.(C) 817/2016, an argument was made that the predecessor-in-interest of the petitioner was not a recorded owner. The Court after considering the respective cases of the parties, came to the conclusion that there is nothing placed on record to substantiate the petitioner’s (Late Jaipal’s) right, title or ownership over the entirety of the subject land and that the claim of the respondents nos. 5 to 7 therein that they were the recorded owners in terms of the compromise reached between the parties and that on the subject land there is certain unauthorized colony, was not rebutted by Late Jaipal. The said finding is recorded by the Court in paragraph 16 of the said judgment and order dated 07.08.2019, which is extracted herein below:-

“16. No rejoinder has been filed by the Petitioner to any of the aforementioned counter affidavits. Be that as it may, the position that emerges from the averments in the petition and the counter affidavits is that there is nothing placed on record to substantiate the Petitioner’s right, title or ownership over the entirety of the subject land. Further, the Petitioner has not filed a rejoinder to contradict



the claim of Respondents 5 to 7 that they are the recorded owners in terms of the compromise reached between the parties and that on the subject land there is at present an unauthorised colony. Therefore both aspects of possession and entitlement to compensation give rise to disputed questions of fact which cannot be examined in the present proceedings.”

7. Late Jaipal – predecessor-in-interest of the petitioner took up the matter upto the Hon’ble Supreme Court by filing SLP(C) No. 4808/2020 which too was dismissed by the Hon’ble Supreme Court by means of an order dated 04.12.2020. It is in view of the aforesaid facts that it has been argued by learned counsel representing the respondents that no petition at the instance of the petitioners can now be entertained in respect of the said subject land, especially for issuing a direction to the Acquiring Authority to take possession of the land in question.

8. When the petitioner was confronted with the findings recorded by this Court in its earlier judgment and order dated 07.08.2019 regarding failure of their predecessor-in-interest to establish any right or title or ownership of the land in question, he has stated that the findings arrived at by this Court in the said judgment cannot be said to be conclusive, however, nothing has been brought on record even in this writ petition whereby any inference, even remotely, can be drawn that the petitioners or their predecessor-in-interest were recorded as land owners in the revenue records or they in any manner can be said to be holders of right or title of ownership.

9. It has further been contended by the petitioners that irrespective of locus of the petitioners to institute these proceedings, if any notification under Sections 4 and 6 of the Land Acquisition Act, 1894 have been issued, the process once initiated need to be taken to its logical end and accordingly, a direction may be issued to the Acquiring Authority namely the Land



Acquisition Collector to take possession of the land in question. Such a submission, in our opinion, is highly misplaced for the reason that any such ground cannot be said to be available to a person who does not have any locus in the matter as already determined by this Court in its earlier judgment and order dated 07.08.2019.

10. Further, having regard to the judgment of the Hon'ble Supreme Court in the case of ***Special Land Acquisition Officer, Bombay & Ors. vs. Godrej and Boyce, 1988(1) SCC 50***, it is difficult to accept the submission made by the petitioner that any direction can be issued to the Land Acquiring Authority to take possession of the land, if the same has not been taken. As a matter of fact, the factum of possession having been taken or not, may have legal consequences, however, such legal consequences do not concern the petitioners in the present matter.

11. In the aforesaid view of the matter, we are not inclined to entertain this writ petition at the behest of the petitioners, which is hereby dismissed.

12. At this juncture, it has been urged that the alternative prayer made in this writ petition may kindly be granted.

13. The alternative prayer made in the petition is that a direction may be issued to the Land Acquisition Collector concerned to issue necessary notification under Section 48 of the Land Acquisition Act, 1894 in case the Acquiring Authority is not inclined to take possession of the land admeasuring 32 Bighas and 6 Biswas.

14. We are afraid, no such prayer can be granted for the reason that Section 48 of the Land Acquisition Act, 1894 gives a liberty to the Government to withdraw from acquisition any land of which possession has not been taken. This liberty/discretion has to be exercised by the



Government and therefore, any prayer made by the petitioner for issuing a direction to the Government to exercise any statutory discretion, in a particular manner, in our opinion, can also not be granted. Prayer made is thus rejected.

15. For all the aforesaid reasons, we are not inclined to entertain this writ petition, which is hereby dismissed.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

JULY 14, 2025

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