

HIGH COURT OF DELHI**Date of Decision: 08.12.2023.****CORAM: HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

W.P.(C) 9173/2015 & CM APPL. 51495/2019, CM APPL. 21613/2021, CM APPL. 17886/2022, CM APPL. 20392/2022, CM APPL. 45299/2022, CM APPL. 6186/2023

VINOD RAJORIA ...PETITIONER**versus****DELHI DEVELOPMENT AUTHORITY AND ORS. ...RESPONDENT****Legislation:**

Constitution of India, Article 226

Delhi Development Authority (Disposal of Developed Nazul Land) Rules 1981

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Land Acquisition Act, 1894

Subject: The petition challenges the unlawful dispossession of the petitioner's land by the Delhi Development Authority (DDA) and seeks the removal of an unauthorized boundary wall, along with the allotment of alternative land.

Headnotes:

Land Dispossession and Compensation – Unlawful Dispossession from Portion No. 2 – Petitioner, owner of land in Village Bharthal, unlawfully dispossessed by Delhi Development Authority (DDA) without acquisition for construction of road and footpath. DDA admits mistake and readiness to compensate as per new Act of 2013. Petitioner seeks alternate land allotment. [Paras 2, 3.1-3.4]

Petitioner's Arguments – Entitlement to Alternate Land Allotment – Petitioner argues for entitlement to an alternate piece of land based on past instances of DDA allotting land under similar circumstances. Rejects compensation offer, citing delay in acquisition process and demands alternate land in Sector-23, Dwarka. [Paras 4.1-4.10]

Respondent's (DDA) Arguments – Compensation Instead of Land Allotment – DDA argues for compensation to Petitioner for utilized land (portion no. 2) and inability to allot alternate land due to regulatory constraints under Nazul Rules, 1981. Emphasizes mistake in utilizing Petitioner's land for road construction and adherence to compensation norms. [Paras 5.1-5.12]

Court's Analysis and Findings – Expedited Acquisition and Compensation – The Court recognizes the need for expedited

acquisition proceedings, referencing Supreme Court judgments emphasizing compensation for illegal dispossession. Directions issued for quick completion of acquisition process under the new Act of 2013 and payment of compensation, including interim compensation. [Paras 6-16.2]

Denial of Alternate Land Allotment Request – The Court denies Petitioner’s request for alternate land allotment, citing lack of statutory right under prevailing laws and DDA’s commitment to constructing a Sports Complex on available land. Acknowledges Petitioner’s right to seek compensation for illegal dispossession. [Paras 17-18.8]

Final Disposition and Directions to DDA and GNCTD – Petition disposed with directions for time-bound compliance to GNCTD and DDA for expedited acquisition and compensation. Separate civil contempt petition registered due to previous inaction by DDA. [Paras 19-22]

Referred Cases:

Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation, (2013) 1 SCC 353

R.L. Jain v. DDA, (2004) 4 SCC 79

Bhola Nath Sharma Through Lrs v. Union of India Through LAC & Anr., 2016 (156) DRJ 537

Representing Advocates:

Petitioner: Mr. Sandeep Sethi, Sr. Advocate, Mr. Rajesh Yadav, Sr. Advocate, Ms. Ruchira V. Arora, Advocates

Respondent: Mr. Sanjay Poddar, Sr. Advocate with Mr. Arjun Pant, Ms. Latika Malhotra, Advocates, Mr. I. M. Khan, Director, LM1SW2, Mr. Rajender Samant, DD, LM1SW2, Mr. Sandeep Singh, LM, DDA, SW2.

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This petition, as amended on 02.01.2017¹, has been filed under Article 226 of the Constitution of India seeking the following reliefs:

(a) *to issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondents to immediately remove/demolish the illegally and unauthorizedly constructed boundary wall, in front of the land of the Petitioner, abutting the Main Dwarka Expressway Road, bearing Mustatil/Rectangle No.4, Khasra/Killa No.21, measuring 02 bighas and 11½ biswas (2596.03 square yards), situated in the revenue estate of Village Bharthal, Tehsil/Sub-Division Kapashera, District South-West, New Delhi; and*

¹ Brought on record vide order dated 24.10.2017

restore possession of the same to the Petitioner, after removal/demolition of the boundary wall;

(b) to issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondents to allot alternative land measuring 2 bighas and 472 biswas (2243.98 square yards), from the land of Respondent-DDA which is adjoining the land of the Petitioner measuring 2 bighas and 117 biswas (2596.03 square yards) comprised in Khasra No.4/21 and which land is vacant and available, in lieu of the land measuring 2 bighas and 472 biswas (2243.98 square yards) of the Petitioner having been illegally used by the Respondents in the road and footpath (pavement), which was comprised in Khasra No.4/21, situated in Village Bharthal, Tehsil/Sub-Division Kapashera, District South- West, New Delhi;

(c) to issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof thereby directing the Respondents not to include the land of the Petitioner measuring 2 bighas and 117 biswas (2596.03 square yards) comprised in Khasra No.4/21, village Bharthal, New Delhi, Village Bharthal, New Delhi, and the adjoining alternative land sought to be allotted to the Petitioner measuring 2 bigha AV2 biswa (2243.98 square yards) from the land of Respondent-DDA; in any development scheme/project and not to undertake any kind of activity in respect of the said land, and further not to cause any interference in the petitioner's use, enjoyment and development of his land, as permissible under law;

(Emphasis Supplied)

1.1. At the outset, it is noted that the prayer (a) does not survive for consideration as it stands satisfied. No arguments were addressed by the parties on prayer (c) either and therefore, the said relief also does not arise for consideration.

1.2. The Petitioner during arguments has pressed for the relief sought at prayer (b) and therefore, arguments were addressed by parties with respect to said relief alone.

2. The Petitioner is, admittedly, the recorded owner of land admeasuring 4 Bighas 16 Biswas Mustatil, Rectangle no.4, Khasra No.21, situated in the revenue estate of Village Bharthal, Sub-Division Kapashera, District, South West, New Delhi ('subject land').

3. This petition was initially filed on 19.09.2015 as the Petitioner was aggrieved by his unlawful dispossession from the subject land; due to the illegal and unauthorized construction of a boundary wall as well as a road by Respondent No.1, Delhi Development Authority ('DDA').

3.1. During the pendency of these proceedings, the Respondent No.1 has restored the possession of 2 Bighas and 11½ Biswas of subject land ('portion no.1') to the Petitioner in December, 2021. However, the Respondent No.1 continues to be in unauthorized occupation of the remaining 2 Bighas and 4½ Biswas of the subject land ('portion no.2') which has been utilized in the

construction of a road and a footpath forming part of Dwarka Expressway, without acquiring the said land.

3.2. In this petition, the Petitioner seeks a direction to the Respondent No.1 to allot alternate land in lieu of the said unauthorized usurpation of portion no.2. The Petitioner seeks allotment of alternate land adjoining portion no.1, which as per the Petitioner is available and lying unutilized with the Respondent No.1 in Sector-23, Dwarka.

3.3. It is admitted on record that the Respondent No.1 without acquisition, dispossessed the Petitioner on or about August, 2015 and proceeded to utilize the land (i.e., portion no.2) for construction of road and footpath without payment of any compensation to the Petitioner.

3.4. Pertinently, the Respondent No.1 has been unable to acquire the said land till date (i.e., till 2023) and has expressed its inability in law to allot alternate land to the Petitioner in lieu of portion no.2 and instead seeks directions to Land Acquisition Collector ('LAC'), Government of NCT of Delhi ('GNCTD') for expediting the acquisition of the said land (i.e., portion no.2).

Arguments of counsel for Petitioner

4. Mr. Rajesh Yadav, learned Senior Advocate addressed arguments in the opening and Mr. Sandeep Sethi, learned Senior Advocate addressed arguments in rejoinder on behalf of the Petitioner.

4.1. He states that it is an admitted position, as is evident from the pleadings of the Respondents, that they have unlawfully dispossessed the Petitioner from the subject land. He states that though portion no. 1, admeasuring 2 Bighas and 11½ Biswas, has been handed over to the Petitioner, however, the remaining portion i.e., portion no. 2, which admeasures 2 Bighas and 4½ Biswas, has been illegally utilized by the Respondents for construction of a road and footpath.

4.2. He states that the Petitioner seeks a direction from this Court to the Respondent No. 1 to allot an alternative piece of land in lieu of the portion no. 2 which has been used for construction of the road. He states that the Petitioner seeks allotment from the Respondent's unutilized land in the same area, which is adjoining the Petitioner's land (i.e., portion no. 1), which admeasures 2 Bighas and 11½ Biswas.

He states that the Petitioner is entitled to the said relief in terms of the submissions of the Respondents recorded in orders dated 30.03.2022 and 28.04.2022 passed by this Court.

4.3. He states that it is the Respondent's stand that no alternative allotment can be made in view of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules 1981 ('Nazul Rules, 1981').

4.4. He states that however, the said stand is belied in view of the fact that the Respondent No.1 in the past as well has made alternative allotment of land in identical circumstances (pertaining to village Mehrauli) to the dispossessed land owner. In this regard he relies upon the orders of Supreme Court in SLP (C) No. 5062/2019 titled as '**Dhan Raj & Ors. v. Delhi Development Authority**', wherein the Court vide order dated 01.10.2010 directed the DDA to decide the landowner's application for allotment of alternative plot. He states that the DDA in pursuance to the aforesaid, identified portions of alternate land parcels, which could be allotted to the landowner and sought requisite permission of the concerned Ministry. He states that as recorded in the order dated 21.08.2018 passed in Contempt Petition (C) No. 166/2015 filed in said SLP, the allotment of alternate land was made by the DDA to the landowner under the Nazul Rules, 1981, in view of the relaxation granted by the 'concerned Ministry' in terms of Rule 45(2)(b) of the said Rules. He states that the Petitioner herein is similarly placed and thus, he can also be allotted an alternative land parcel by Respondent No.1.

4.5. He states that in another instance pertaining to Khasra No. 50/6, Village Pooth Kalan, Rohini Zone, where the affected individual's land had been used in the road/passage without acquisition, the Respondent allotted alternative land to the said person.

4.6. He states that in addition, the official of the Respondent No.1 i.e., CLM, DDA, in the file noting dated 02.11.2015 and correspondence has proposed that the Petitioner herein can be allotted alternate adjoining land as compensation with the approval of 'competent authority'.

4.7. He states that from a perusal of the aforesaid instances, it is evident that the Respondent, DDA, has requisite powers to allot an alternative piece of land to the Petitioner and is deliberately opting not to do so.

4.8. He states that the Petitioner is unwilling to accept the offer of compensation, as proposed by Respondent No.1 in CM APPL. 6186/2023. He states that as is evident from the record, the LAC has failed to initiate the process for acquisition and the procedure under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the new Act of 2013') is likely to consume many years. He states that 7½ years have already gone by and therefore the Petitioner cannot be compelled to await the determination and award of compensation.

4.9. He states that the high handedness of the Respondent No.1 in unlawfully dispossessing the Petitioner and thereafter, wrongfully denying the said dispossession, which has led to the filing and pendency of this petition is writ large; and in this regard he refers to the proceedings recorded in orders dated 22.07.2021, 16.09.2021, 10.11.2021, 07.12.2021, 30.03.2022 and 28.04.2022.

4.10. He states that in these proceedings the Petitioner is not seeking any damages for the unauthorized use of the subject land and he reserves his right to file a separate suit for the said claim.

Arguments of the counsel for the Respondents

5. In reply, Mr. Sanjay Poddar, learned Senior Advocate for the Respondent states that portion no. 2 of the Petitioner's land has been mistakenly utilized in the construction of road bearing no. 226 which connects to the National Highway namely 'Dwarka Expressway'.

5.1. He states that possession was taken over by Respondent No.1 under a bona fide belief that the Petitioner's land has been notified for acquisition. He states that the possession of the portion no. 2 and the adjoining areas was taken over in pursuance to a notification dated 15.03.2002 issued by the LAC under Section 17(1) of the Land Acquisition Act, 1894 ('the old Act, 1894'). He states that when the possession of the land was handed over to DDA on 14.08.2002, each and every Khasra was not specifically identified and possession of a large area was handed over to DDA.

5.2. He states that land admeasuring 2911 Bighas and 14 Biswas was notified for acquisition under Section 4 of the old Act, 1894 on 13.12.2000; which was followed by declaration in respect of land admeasuring 2904 Bighas and 16 Biswas under Section 6 of the said Act on 07.12.2001. He states that when the joint survey was carried out, inadvertently, the subject land was missed out. He states however, possession of the land proposed to be acquired was taken over in pursuance to the notification issued by the LAC under Section 17(1) of the old Act, 1984 on 15.03.2002 and after following due process of law, the award was passed on 23.10.2002. He states that the acquisition process has been upheld by the Courts. He states that the land has been acquired for the development of Dwarka, Phase-II, for the planned development of Delhi as per Master plan of Delhi. He states that the subject land was earmarked for the construction of the Sports Complex and the Master plan road bearing no. 226, which is 60 mtr. wide.

5.3. He states that since large area was acquired, portion no. 2 admeasuring 2 Bighas 4½ Biswas was utilized for the road construction work without acquisition, under a mistaken belief.

5.4. He states that the Respondent No.1 is bound in law and remains ready and willing to compensate the Petitioner, for the portion no. 2 which has been used in construction of the road. He states that the Respondent No. 1 post realization of this mistake, immediately requested the LAC on 04.04.2016, followed by an amended request dated 15.03.2018 to acquire the portion no. 2. He states that Respondent No. 1 has consistently followed up by way of several letters (placed on record), till 19.12.2022, to complete the acquisition proceedings at the earliest. He states that the process of acquisition has now been initiated by the LAC in accordance with the provisions of the new Act of 2013.

5.5. He states that to show its bonafide the Respondent No. 1 has obtained a tentative value of the compensation payable to the Petitioner from the LAC on 07.01.2023 and has filed the CM APPL. No. 6186/2023 seeking permission to make the payment of the said compensation to the Petitioner as an interim arrangement.

5.6. He states that however, no alternative allotment of land in lieu of portion no. 2 can be made in view of the fact that there are no provisions/rules for allotment of alternate land.

5.7. He states that the adjoining land in Sector-23, Dwarka, has been placed at the disposal of the Respondent, DDA, by the Central Government; and the said land is required to be dealt with only in accordance with the Nazul Rules 1981. He states that the said Rules, puts an embargo upon the DDA to make any allotment de hors the said rules. He states that no allotment can be made otherwise than in accordance with the said Rules. 5.8. He states that as per the law laid down by the Supreme Court and High Court in judgments set out hereinunder, the disposal of land in terms of alternate allotment is strictly governed by the provisions of Delhi Development Act, 1957, and Nazul Rules, 1981. He states that the DDA cannot make alternate allotment of land to the Petitioner as prayed for and can only pay compensation post-acquisition and damages for the period of unauthorized use. In this regard, he relies upon the following judgments:

- (a) ***RL Jain v. DDA***, (2004) 4 SCC 79;
- (b) ***Harbans Singh v. Union of India***, CW 2920/1995 decided on 12.12.1997;
- (c) ***Manphool v. DDA & Ors.***, WP(C) 6225/2003 decided on 21.09.2007;
- (d) ***State of UP v. Keshav Prasad Singh***, (1995) 5 SCC 587; and (e) ***East Dehi Municipal Corporation v. Daljit Singh Bhatia & Ors.*** decided on 11.07.2014 in CM(M) No. 725/2012.

5.9. He states that the reliance placed by the Petitioner on the proceedings in the matter of ***Dhan Raj and Ors.*** (Supra) is misplaced. He states that the allotment to the said land owner was made in view of the special order passed by the Central Government and not in terms of the Nazul Rules, 1981.

5.10. He reiterates that the utilization of the Petitioner's land identified as portion no. 2 without first acquiring is due to a bonafide mistake and not intentional. He states that the land has been utilized for public purpose and the only course available to the Respondent No. 1 is to pay compensation determined as per the provisions of new Act of 2013. He states that Respondent No. 1 prays to this Court that directions be issued to the LAC to expedite the acquisition process in terms of ***Tukaram Kana Joshi & Ors.***

v. Maharashtra Industrial Development Corporation, (2013) 1 SCC 353, so that compensation can be released to the Petitioner at the earliest.

5.11. He states that a perusal of the order sheet and the record would show that until the year 2021 and more specifically order dated 22.07.2021, the Petitioner has only been praying for compensation as per law. He states that the prayer for alternate allotment has only been pressed for subsequently. He states that even in the order dated 30.03.2022, the issue arising for consideration was the delay in payment of compensation.

5.12. He states that the Respondent No.1 is willing to pay damages to the Petitioner for the period of unauthorized use as directed by the Supreme Court in ***RL Jain*** (supra).

Analysis and findings

6. This Court has considered the submissions made by the counsel for the parties and perused the record.

7. The controversy arising for consideration has a narrow compass. The dispute is limited to the illegal dispossession of the Petitioner from the land parcel identified as portion no. 2, ad-measuring 2 Bighas and 4 ½ Biswas and issue under consideration is with respect to the relief to which the Petitioner is entitled from Respondents, in these admitted facts.

8. The material facts are admitted on record. The facts set out hereinunder are germane for deciding the controversy:

(i) The Petitioner's ownership of the subject land (i.e., portion nos.1 and 2) in pursuance to the registered sale deed dated 24.06.2008 is not disputed by Respondent No.1.

(ii) The Petitioner's dispossession from the portion no.2 by Respondent No. 1 is without any authority in law and hence, unauthorized.

(iii) The portion no.2 has been used for the construction of road and footpath (pavement) and forms part of the Master Plan Road bearing no. 226,

which is being used by general public. The said road connects to the National Highway namely 'Dwarka Expressway'. The said land therefore, stands utilized by Respondent No.1 and is incapable of being restored to the Petitioner.

(iv) The Respondent No. 1 has taken a stand that the utilization of the Petitioner's land i.e., portion no.2, without acquisition was done under a mistaken belief that the said land already stands acquired by the LAC in pursuance to the award dated 23.10.2002.

(v) The Petitioner has stated in paragraph no. 6 of the amended petition that he learnt about his dispossession in August, 2015 and immediately, filed this writ petition on 22.09.2015.

(vi) The Respondent No. 1 has submitted a request to the Land and Building Department of GNCTD for acquiring the said land utilized for road construction as early as on 04.04.2016 (as amended on 15.03.2018) and followed up on the said requests.

(vii) As per the Respondent No. 1, the portion no.2 is liable to be acquired by the LAC under the provisions of new Act of 2013 and the Respondent No. 1 remains willing to pay the compensation amount as determined under Section 23 of the new Act of 2013.

(viii) The Respondent No. 1 has stated that though the portion No. 2 already stands utilized, the urgency provision under Section 40 of the new Act of 2013 cannot be invoked by the GNCTD to expedite the acquisition process, as the conditions set out in Section 40 are not attracted for a project pertaining to construction of roads and footpath connecting to National Highway.

(ix) The Respondent No. 1 has placed on record notification dated 03.03.2023 issued by GNCTD under Section 4(1) and (2) of the new Act of 2013 for preparing a Social Impact Assessment study.

(x) The Respondent No. 1 on 30.01.2023, in these proceedings, has offered to pay a sum of Rs. 98,27,082/- to the Petitioner towards compensation on the basis of tentative assessment of compensation made by the LAC. The said payment has been offered pending determination of the compensation by LAC in accordance with Section 23 of the new Act of 2013.

(xi) In addition, Respondent No. 1 has submitted that this Court may issue directions to the LAC for expedited acquisition in terms of the judgment of the Supreme Court in **Tukaram Kana Joshi** (supra).

(xii) The Respondent No. 1 admits that the Petitioner is to be compensated for the unauthorized dispossession and in this regard, it has relied upon the directions issued the Supreme Court in **R.L. Jain** (supra).

(xiii) The Petitioner has opposed the submissions of the Respondent No. 1 and contended that in the facts of this case, the LAC has delayed initiation of the acquisition proceedings by more than 7½ years; and the conclusion of the said acquisition proceedings is no where in sight considering the elaborate procedure of Social Impact set out in Chapter II and the procedure of acquisition in Chapter IV of the new Act of 2013.

(xiv) The Petitioner in the aforesaid facts seeks a direction to the Respondent No. 1 to allot an alternate parcel of land equivalent to 2 Bighas and 4 ½ Biswas in Sector-23, Dwarka, itself by exercising the exception provided under Rule 45(2)(b) of the Nazul Rules, 1981. The Petitioner seeks allotment of the alternate land parcel, adjoining the portion no.1.

9. The only issue therefore, before this Court is as regards to the nature of relief to which the Petitioner is entitled for being compensated for his admitted unlawful dispossession from portion no. 2 of the subject land.

Expediting acquisition proceedings under the new Act of 2013

10. The issue of illegal dispossession of the land owner by the statutory authority without following the due process of law was duly considered by the Supreme Court in ***Tukaram Kana Joshi*** (supra) and the anguish of the Supreme Court on the unlawful action of the welfare State was encapsulated by the said Court in following paragraphs.

“10. In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the rule of law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

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17. Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The nonfulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such illtreatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/ constitutional/ human rights, under the garb of industrial development.

18. The appellants have been deprived of their legitimate dues for about half a century. In such a fact situation, we fail to understand for which class of citizens the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this

country, to whom constitutional/statutory benefits are accorded, in accordance with the law.

19. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but also disrespect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their own hands. The findings of the High Court, that requisite records were not available, or that the appellants approached the authorities at a belated stage are contrary to the evidence available on record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the doctrine of equality, which is the soul of our Constitution. Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation. The appeals, etc. are required to be decided expeditiously, for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property, for the amount of compensation that is likely to be paid to him at a belated stage.

20. While dealing with the similar issue, this Court in *K. Krishna Reddy v. Collector (LA)* [(1988) 4 SCC 163: AIR 1988 SC 2123], held as under : (SCC p. 167, para 12)

“12. ... After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one-half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charms and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated.

In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time.”

21. *In view of the above, the instant case represents a highly unsatisfactory and disturbing situation prevailing in one of the most developed States of our country.”*

(Emphasis Supplied)

11. Similarly, the issue of compensation to the land owner for his/her illegal dispossession by a statutory authority without following due process of law was duly considered by the Supreme Court in its another judgment in **R.L. Jain** (supra) wherein, the Supreme Court concluded that a person deprived of possession would be entitled to compensation for the anterior period prior to completion of proceedings. The relevant portion of the judgment reads as under:

“17.1. The normal rule, therefore, is that if on account of acquisition of land a person is deprived of possession of his property he should be

paid compensation immediately and if the same is not paid to him forthwith he would be entitled to interest thereon from the date of dispossession till the date of payment thereof. But here the land has been acquired only after the preliminary notification was issued on 9-9-1992 as earlier acquisition proceedings were declared to be null and void in the suit instituted by the landowner himself and consequently, he was not entitled to compensation or interest thereon for the anterior period.

18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.

(Emphasis supplied) 12.

The said judgment of the Supreme Court in **R.L. Jain** (supra) was followed by a Coordinate Bench of this Court in **Bhola Nath Sharma Through Lrs v. Union of India Through LAC & Anr. 2016 (156) DRJ 537** while dealing with similar facts pertaining to dispossession of the land owners prior to initiation of acquisition proceedings in respect of village Bahapur. This Court similarly applying the ratio of **R.L. Jain** (supra) awarded compensation to the land owners therein for the period of dispossession prior to the notification under Section 4 (1) of the Act of 1894. The relevant portion of the judgment reads as under:

“127. In the aforesaid case namely R.L. Jain (Supra), land had been acquired only after the preliminary notification was issued on 09.09.1992 as earlier acquisition proceedings were declared null and void in the suit instituted by the land owner and consequently, he was not entitled to compensation or interest thereupon for the anterior period.

128. **In R.L. Jain (Supra), the Bench, however, noted that where possession is taken prior to the issuance of notification, it would be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property.**

129. It may be noted here that no effort was made by the land owner to claim any damages for use and occupation of the land or to get the rent for the same.

130. **Strictly speaking, interest is payable since the date of dispossession after the notification under Section 4(1) of the Act.** However, taking into consideration that appellants are surely to be

compensated for the number of years for which they were dispossessed prior to the notification, I deem it expedient to award interest at the rate of 6% per annum from the date of dispossession in the year 1972 till the date of notification under Section 4(1) of the Act. This would take care of the damages to which the appellant, in the opinion of this Court, would be entitled to.

131. The appellants would further be entitled to interest at the rate of 9% per annum for one year from the date of notification and 15% per annum after the expiry of one year till the payment.

132. The appellants shall also be entitled to all other statutory benefits, including solatium at the rate of 30% per annum and interest over solatium in terms of the judgment delivered in Sunder v. Union of India, (2001) 7 SCC 211 and Gurpreet Singh v. Union of India, (2006) 8 SCC 457.

(Emphasis supplied) 13.

The Supreme Court in **Tukaram Kana Joshi** (supra) after taking note of the fact of dispossession of the land owner without payment of compensation, to resolve the impasse issued directions for an expedited acquisition process under the old Act of 1894. The relevant portion of the judgment reads as under:

“22. Be that as it may, ultimately, good sense prevailed, and the learned Senior Counsel appearing for the State came forward with a welcome suggestion stating that in order to redress the grievances of the appellants, the respondent authorities would notify the land in dispute under Section 4 of the Act within a period of 4 weeks from today. Section 6 declaration will be issued within a period of one week thereafter. As the appellants have full notice and information with respect to the proceedings, publication in the newspapers either of the notification or of the declaration under the Act are dispensed with. Notice under Section 9 of the Act will be served within a period of 4 weeks after the publication of Section 6 declaration and award will be made within a period of three months thereafter. The deemed acquisition proceedings would thus be concluded most expeditiously. Needless to say, the market value of the land in dispute will be assessed as it prevails on the date on which the Section 4 notification is published in the Official Gazette. Payment of compensation/award amount will be made to the claimants/persons interested immediately thereafter, along with all statutory benefits. The appellants shall be entitled to pursue the statutory remedies available to them for further enhancement of compensation, if so desired.”

(Emphasis Supplied)

14. The Respondent No. 1 as well before this Court has urged that directions for time bound completion of acquisition proceedings under the new Act of 2013, be issued.

15. This Court has perused the affidavit dated 10.11.2021 filed by Respondent No. 1 to show its bonafide with respect to the steps taken for initiating acquisition proceedings. With this affidavit, the Respondent No. 1 has enclosed a letter dated 15.03.2018 issued by Respondent No. 1 to

GNCTD stating that since the land i.e., portion no. 2, already stands utilized in the construction of the road; no Social Impact Assessment study is required to be conducted in respect of this parcel of land. The contents of letter dated 15.03.2018 read as under:

“Requisite cost of acquisition is available and will be deposited in your office, as provided under provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as and when required by you. Since the land proposed to be acquired has already been utilized (under the possession of the Govt./DDA), no Social Impact Assessment Study (SIA) is required to be conducted in respect of this piece of land. All further necessary information and assistance will be provided on the date/time appointed/stipulated by you.”

(Emphasis Supplied)

15.1. The Petitioner before this Court as well has not contended that there is any requirement for undertaking a Social Impact Assessment study for land parcel i.e., portion no. 2.

15.2. In the facts of the present case, where the land parcel i.e., portion no. 2, already stands utilized in an irreversible manner and the Petitioner is not seeking return of the said land, this Court is of the considered opinion that the compliance of Sections 4 to 8 of Chapter II of the new Act of 2013 is otiose.

15.3. This Court has perused the notification dated 03.03.2023 issued by GNCTD under Section 4 (1) and (2) of the new Act of 2013 for carrying out a Social Impact Assessment study for the land parcel i.e., portion no. 2. The said notification is confined to the said land parcel. It is evident that the notification and the procedure being followed thereunder is perfunctory and being carried out for mechanical compliance of the provisions of the Act.

15.4. This Court is therefore satisfied that in the facts of this case, the compliance of provision of Sections 4 to 8 of the new Act of 2013 will not only cause loss to the public exchequer but will also further delay the conclusion of the acquisition proceedings. The public exchequer will incur a loss for the expenses incurred for carrying out the Social Impact Assessment study and the liability of payment of enhanced compensation to the Petitioner due to the delay caused in completion of the acquisition proceedings.

15.5. As noted above, the Petitioner i.e., the land owner is not opposing the acquisition of this parcel of land and Respondent No. 1 i.e., the statutory authority which is seeking the acquisition are both satisfied that the land has to be acquired for public purpose. Most importantly, the land parcel already stands utilized for the construction of road no. 226, being used by the general public; and is incapable of being restored to the Petitioner. The facts of this case as well, in fact there is in existence deemed acquisition proceeding with

respect to land parcel (i.e., portion no. 2) as opined by Supreme Court in ***Tukaram Kana Joshi*** (supra). This Court therefore, keeping in view the law laid down by the Supreme Court in ***Tukaram Kana Joshi*** (supra) hereby directs that the compliance of Section 4 to 8 of Chapter II of the new Act of 2013 are exempted with respect to land parcel i.e., portion no.2.

16. This brings the Court to Chapter IV of the new Act of 2013 under which the GNCTD has to issue appropriate notifications for determining the market value of the land to be acquired to enable payment of compensation to the Petitioner herein. Accordingly, accepting the prayer of the Respondent No. 1 for issuing directions of expedited process of acquisition and with a view to redress the grievance of the Petitioner; in accordance with the judgment of the Supreme Court in ***Tukaram Kana Joshi*** (supra), this Court issues the following directions to Land and Building Department as well as the LAC, GNCTD for completion of process under Chapter IV of the new Act of 2013:

- (i) The concerned department of GNCTD is directed to notify the land parcel in dispute i.e., portion no. 2 under Section 11 within four (4) weeks from today;
- (ii) Section 19 declaration will be issued within a period of one (1) week thereafter;
- (iii) Since, the Petitioner has full notice and information with respect to the proceedings, publication in the newspapers either of the notification or of the declaration under the Act are dispensed with;
- (iv) Notice under Section 21 will be served within a period of four (4) weeks after the notification of the Section 19 declaration;
- (v) The award under Section 23 will be made within a period of three (3) months thereafter;
- (vi) Needless to state, the market value of the land in dispute will be assessed as it prevails on the date on which the Section 11 notification is published in the official Gazette;
- (vii) Payment of compensation/award amount will be made to the Petitioner immediately thereafter, along with all statutory benefits. The Petitioner will be entitled to pursue the statutory remedies available to him for further enhancement of compensation, if so desired; and
- (viii) The Respondent No. 1 is enjoined with the responsibility of ensuring that the aforesaid directions are communicated to GNCTD and complied with. Respondent No. 1 shall take immediate steps within one (1) week in this regard.

16.1. In addition, the Respondent No. 1 is directed to remit the sum of Rs.98,27,082/- to the Petitioner within one (1) week as offered in CM APPL.

6186/2023. The said amount will be accepted by the Petitioner without prejudice to his rights and contentions to make representation as regards the true market value of the land before the Collector in the enquiry to be conducted under Section 23 of the new Act of 2013.

16.2. In case, the Petitioner is unwilling to accept the said amount, the Respondent No.1 shall deposit the said amount with the Registry of this Court within four (4) weeks. Further, if the Petitioner fails to withdraw the said amount from the Registry for a period of six (6) months, the Respondent No.1 will be at liberty to withdraw the said amount and deposit the said amount with the LAC in anticipation of conclusion of acquisition proceedings.

With respect to compensation for occupation prior to issuance of notification under Section 11 of the new Act of 2013

17. This brings the Court to the remaining issue of compensation payable to the Petitioner herein for the period prior to issuance of notification under Section 11 of the new Act of 2013 for portion no.2. The Respondent No. 1 has conceded that the Petitioner herein is entitled to compensation for the period anterior to notification under Section 11 of the new Act of 2013 as per the law laid down by the Supreme Court in ***R.L. Jain*** (supra). However, the Petitioner has reserved his right to initiate separate proceedings by way of civil suit for the said period of illegal dispossession in August, 2015 until the issuance of notification under Section 11 of the new Act of 2013. Accordingly, this Court is not adjudicating upon the said claim of the Petitioner and the rights of the Petitioner are reserved in accordance with law.

17.1. The Petitioner's right to seek compensation for the illegal dispossession with respect to portion no.1 is also reserved.

With respect to allotment of alternate land

18. This Court is unable to accede to the prayer of the Petitioner for a direction to Respondent No. 1 to allot an alternate parcel of land, adjoining portion no.1, in Sector-23, Dwarka, itself by applying to the Central Government for granting relaxation as per Rule 45 (2) (b) of Nazul Rules, 1981.

18.1. The Respondent No. 1 has stated that the existing land available with it in Sector-23, Dwarka, has been placed at its disposal for constructing a Sports Complex as provisioned in the Master Plan for Delhi. The said fact is not disputed by the Petitioner. In the opinion of this Court on this ground alone this prayer cannot be acceded to.

18.2. The Petitioner has not relied upon any prevalent statutory scheme or provision of the Delhi Development Act, 1957 or Rules thereunder to show that the Petitioner herein has any statutory right to claim allotment of an alternate land in lieu of the land parcel i.e., portion no. 2.

18.3. This Court has perused the orders and more specifically order dated 28.04.2022 passed in these proceeding and is unable to discern any direction of this Court to Respondent No. 1 to make an allotment of alternate parcel of land. In fact, on a holistic reading of the orders of this Court passed on 16.09.2021, 30.03.2022 and 28.04.2022, it is apparent that this Court was alarmed at the failure of Respondent No. 1 to complete the acquisition proceedings and pay the lawful compensation to the Petitioner herein.

18.4. The law settled by Supreme Court in **R.L. Jain** (supra) as followed by this Court in **Bhola Nath Sharma** (supra) authoritatively deals with 'additional compensation' to be paid to the land owner who has been dispossessed in contravention of the provisions of the old Act of 1894. The Petitioner has already reserved his right to seek said compensation in independent proceedings by way of civil suit. Therefore, there are no exceptional circumstances in the facts of this case for issuing a direction to Respondent No. 1 to apply to the Central Government for permitting allotment of alternate land in Sector-23, Dwarka.

18.5. There is no dispute that the land parcel has been acquired and used for public purpose i.e., construction of road no. 226, which is being used by general public. This Court does not condone the unlawful act of the Respondent No. 1 in illegally dispossessing the Petitioner and therefore has issued the directions for expedited acquisition at paragraphs 15 and 16 hereinabove.

18.6. The proceedings of the Supreme Court in the case of **Dhanraj and Ors.** (supra) undoubtedly appears to have been passed in similar facts as is evident from order dated 22.07.2008 passed by High Court in CM(M) 836/2007. However, none of the orders of the Supreme Court contains direction to DDA or Central Government to allot an alternate parcel of land. The proceedings of the said matter placed before this Court do not afford any basis to the Petitioner to seek a direction to Respondent No. 1, as a matter of statutory right, in this petition for making allotment of alternate land.

18.7. Pertinently, the Petitioner made a representation dated 15.07.2019 to Respondent No.1 for allotment of equivalent alternative land, adjoining his remaining land (portion no.1). However, the request of the Petitioner through the said representation was declined by Competent Authority on 13.09.2019, stating that there is no provision/policy for allotment of alternate land. In view of the said rejection, the reliance placed by the Petitioner on the note of the CLM dated 02.11.2015 is of no consequence.

18.8. With respect to the reference to an allotment of alternate land to a landowner in village Pooth Kalan, Rohini, there is no sufficient material for

this Court to hold that there exists a statutory right in favour of the Petitioner to seek allotment of alternate land.

19. With the aforesaid directions at paragraph nos. 15 and 16 the present petition stands disposed of.
20. GNCTD including the concerned Land and Building Department as well as the LAC have due notice of these proceedings as is evident from Respondent No. 1's affidavit dated 10.11.2021. And, therefore they are directed to comply with the directions issued herein in the time frame provided hereinabove. The Respondent No.1 is directed to ensure that the copy of this judgment is served on the Chief Secretary, GNCTD, forthwith for time bound compliance.
21. Pending applications, if any, stand disposed of.
22. The Predecessor Bench of this Court had issued a Show cause notice of contempt on 28.04.2022. The registry is directed to register a separate civil contempt petition and place it before the Roster Bench on 31.03.2024.

The said Show cause notice was issued by this Court in view of the inaction of the Respondent No.1 in complying with order dated 30.03.2022 of this Court and in compensating the Petitioner for the unauthorized dispossession. The issue of payment of compensation continues to remain undecided. This Court in this judgment has issued directions for expedited acquisition with a mandate to Respondent No.1 to ensure the completion of the said process and determination of compensation. In case, Respondent No.1 fails to complete acquisition within the time line fixed by this Court, the necessary consequences shall follow.

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