Kishan Chand Sharma Vs Chet Ram Sharma (Since Deceased)

Court: DELHI HIGH COURT

Date of Decision: July 14, 2016

Citation: (2016) 8 ADDelhi 308

Hon'ble Judges: Mr. Ashutosh Kumar, J.

Bench: Single Bench

Advocate: Mr. Arun K. Sinha, Advocate, for the Appellants; Mr. Rajesh Yadav, Advocate, for the Respondent Nos. 1 to 4; Mr. Sanjay Kumar Pathak, Ms. K. Kaomudi Kiran Pathak, Mr. Sunil K. Jha and Mr. Kushal Raj, Advocates, for the Respondent No. 5; Mr. Dheeraj Bhardw

Final Decision: Dismissed

Judgement

Mr. Ashutosh Kumar, J.â€"Both the appeals are being dealt with and disposed of by this common judgment.

2. The appellants have challenged the judgment of the Reference Court dated 20.08.2014 passed in LAC No. 159/2011 whereby the

compensation with respect to the acquired land, measuring 2 bighas and 16 biswas out of File No. /Khata No. 621/2/3/2/2/1 min (2-16) in

Bahapur Village in favour of respondents Nos.1 to 4 was directed to be distributed amongst them equally along with the accrued interest over the

awarded amount. By the aforesaid judgment, the objections and claims of the other interested persons including the appellants were dismissed.

3. A brief background of facts would be necessary before delving into the subject matter of the present appeals.

4. Land measuring 28 bighas was purchased by respondent No. 1 (IP No. 1) against sale consideration from Prithi Nath in the year 1956 by a

registered sale deed dated 24.11.1956. The lands stood recorded and mutated in the name of respondent No. 1 on 18.12.1962. Subsequently,

respondents Nos. 1 to 4 became the recorded owners and by virtue of such title, they staked claims over all kinds of rights under the law in

various fora. Out of the aforesaid purchased land, (28 bighas), 25 bighas and 4 biswas were acquired by an award No. 2059 for which

compensation was received by them whereas the land measuring 2 bighas and 16 biswas remained un-acquired (which is the subject matter of the

present appeal).

5. Pursuant to the acquisition proceedings referred to above vide award No. 2059, references under Section 18 of the Land Acquisition Act,

1894 (LAC No. 20/1992 titled Chet Ram v. Union of India filed by the respondents), and under Section 30/31 of the Land Acquisition Act, 1894

(LAC No. 120/1984 titled Union of India v. National Spiritual Assembly and another) were made. In the aforementioned Land Acquisition case

namely LAC No. 120/1984, pertaining to 25 bighas and 4 biswas out of the entire area of the land purchased, the Reference Court, vide judgment

dated 19.11.1990, directed for payment of compensation to the respondent No. 1, Chet Ram Sharma, in view of compromise arrived at between

the parties. The Reference Court, on that occasion, held as follows:

In view of the statements of the parties and in view of the compromise arrived at between the parties which is Ex.X1 on record, it is ordered that

IP No. 18 Sh.Chet Ram be paid compensation for 25 bighas 4 bishwas of land comprised in khasra nos.621/2/3/2/4 (21-11) and 621/2/3/2/1 (3-

13) and IP No. 3 to 6 along with IP No. 2, 7 to 9 is paid compensation in respect of khasra No. 560/1 (73 bighas) as detailed in compromise

Ex.X1 Nazir to do the needful.

6. While such earlier proceedings were going on, respondents No. 1 to 4 filed a suit bearing No. 645/80 seeking inter alia a declaration that they

are co-owners of 28 bighas of land. A bench of this court vide order dated 10.02.1981 directed the respondents No. 1 to 4 to be declared as co-

sharer in which each would get Ã¯Â¿Â½th share in the property. Consequently on the basis of the aforesaid judgment, and the compromise between the

parties, compensation was paid to respondents Nos.1 to 4 in LAC No. 120/1984.

7. After the acquisition of 25 bighas and 4 biswas of land of which the respondent No. 1 was the owner, he applied for correction of revenue

records of the remaining un-acquired portion of the land i.e. 2 bighas and 16 biswas so that the same may be reflected in the revenue records. By

order dated 24.04.1989, the concerned SDM allowed the aforesaid correction in the name of respondent No. 1 and demarcation of the land was

carried out by the revenue officials. The possession of respondents No. 1 to 4 was thereafter also confirmed in the ""nishandehi"". The land was

mutated in the name of respondents Nos.1 to 4. Thus, for all practical purposes they became the recorded owners in possession of the land

concerned.

8. A fresh acquisition proceedings for 8 bighas and 6 biswas of land, including the 2 Bighas and 16 Biswas of the remaining land of the

respondents, commenced in the year 2002 for which notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter called the Act)

was issued on 28.11.2002 and a subsequent declaration under Section 6 was made on 13.06.2003. Possession of the land was taken on

28.10.2003. The award No. 24/DC(S)/2005-2006 with respect to acquired land was announced on 06.06.2005 by the Land Acquisition

Collector, South Delhi. The Land Acquisition Collector, South Delhi, assessed the market value of the land at the rate of Rs. 2,684/- per sq. yard

and directed that the compensation be apportioned in terms of the latest revenue records. However, because of the disputes occurring in the

apportionment, a reference was made by the Land Acquisition Collector on 02.06.2006 with respect to file No. 621/2/3/2/2/1 min (2-16).

9. In the aforesaid reference, namely LAC 159/11, the Reference Court vide Judgment & order dated 20.08.2014 allowed the claim of

respondents Nos. 1 to 4 (interested persons Nos. 1 to 4 therein), to receive the compensation amount and directed that the compensation amount

along with the accrued interest be apportioned amongst respondents Nos. 1 to 4 equally.

10. The aforesaid judgment of the Trial Court dated 20.08.2014 referred to above is under challenge.

11. Be it noted that the respondents had reiterated their stand before the Reference Court that the land measuring 28 bighas was purchased in the

year 1956 from one Mahant Prithi Nath vide registered sale deed dated 24.11.1956 and out of the aforesaid land, earlier also, there was an

acquisition and for which the respondents were paid the compensation. This new acquisition relates to the remainder land for which the

respondents are entitled to compensation.

12. Before the Reference Court, the appellants and other interested persons claimed that the vendor of the property in question which was

purchased by the respondents, did not have any right to alienate the property as he had no document of title in his favour. The acquired land was

the reserved land for the joint use of Pujaris and for the purposes of managing temple affairs. The said land could not have been used for any

personal benefits as it belonged to Shamlath Thok Jogian and Thok Brahmins equally as per the revenue records. It was submitted that Thok

Jogians and Thok Brahmins were sub-divided into sub sects. Since all of them were the Pujaris of the temple, they naturally became the

bhoomidars and co-owners. Thok Jogians had a share of offering of the temple in the ratio of 1:3. In such view of the matter, the land could not

have been sold or transferred by Mahant Prithi Nath to respondent No. 1. The further objection of the appellants before the Reference Court was

that the sale deed executed by Mahant Prithi Nath was forged and fabricated and could not have been relied upon. Similarly, the mutation in the

revenue records or assessment of taxes with the MCD was the byproduct of collusion between the respondents and understrapper''s of the Land

Revenue Department.

13. References of various litigation were cited by the appellants before the Reference Court to demonstrate that the entire conveyance of the land

in question, in favour of the respondents, by the Mahant Prithi Nath, way back in 1956, was illegal and could not have been sustained. To list some

of them: Civil Suit No. 61/1969 titled as ""Mahant Prithi Nath Chela Mahant Pancham Nath Jogi"" was filed for declaration regarding bari/turn of the

right of performing Puja and realising offerings and tehbazari relating to the temple of Shree Kalkaji. The aforesaid suit was decided on 01.02.1974

wherein the share of the appellants in the aforesaid offerings and other rights were determined.

14. In the Civil Suit No. 266/1952 titled ""Tula Ram v. Prithvi Nath,"" Mahant Prithvi Nath was restrained from selling even the stone dust from the

land attached to the temple.

15. In Civil Suit No. 451/2000, it was held that the land belonged to Mandir Shree Kalkaji which could not have been sold and in the aforesaid

suit, the conveyance of land was held to be null and void.

16. It was thus urged by the appellants that Respondents purchased the property in 1956 when dispute relating to the title of the vendor was still

pending consideration and therefore, the Respondents cannot be said to be the bona fide purchasers of the land.

17. Learned advocates appearing for the appellants submitted that the appellants were not aware of the prior acquisition by the Government and

for which the respondents were paid compensation. It was only when the second notification for acquisition came in the year 2002, that the

appellants preferred a civil suit CS(OS) No. 288/10/06 which was dismissed holding that the Reference Court is a civil court of original jurisdiction

and the issue of title could well be decided by the Reference Court.

18. Learned counsels for the appellants submit that the Reference Court did not at all advert to the aforesaid issue namely whether Mahant Prithi

Nath had the competence to transfer land in favour of respondent No. 1 on the specious plea that such an old issue could not have been opened

under the Land Acquisition Act, 1894.

19. On the contrary, the respondents claimed compensation on the basis of their being recorded owners of the land acquired. They have been in

the settled possession of the subject land and were also assessed for the house tax by the MCD. After the acquisition, the land was handed over to

the Government by them.

20. As against the claim of the appellants that the land belonged to Thok Brahmins and Thok Jogians equally, it was contended on behalf of the

respondents that as per Jamabandi (Ex.IP-1-4W-1/12) there was no reference of Mandir Shree Kalkaji being one of the recorded owners of the

land. An effort was made by the respondents to demonstrate that in the Jamabandi from 30.05.1952 till the time the land was acquired, there were

45 mutations/entries/corrections. The mutations at Sl.Nos.7, 11, 19 & 23 (from 30.04.1952 to 12.03.1968) pertained to transfers made by

Mahant Prithi Nath which included the transfer of land in favour of respondent No. 1. It was thus argued that various tracts of the land were sold

by Mahant Prithi Nath in favour of others also prior to the conveyance of the property to the respondents and none of such transfers have been

challenged nor any legal action has been initiated by any one of the appellants or interested persons.

21. Responding to the citation of earlier litigations by the appellants before the Reference Court, it was submitted by the respondents that civil suit

No. 61/1969 (Mahant Prithi Nath Chela Mahant Pancham Nath Jogi) was not with respect to the land in question and civil suit No. 266/1952

(Tula Ram v. Prithvi Nath) was in respect of interse disputes of Pujaris and did not concern the subject land or any outsiders. It was further

submitted that the record of Jamabandi did not evince the ownership of the temple in any manner. The documentary evidence in the form of

demarcation report dated 17.09.1989 (Ex.PW.1/24), Khasra Girdawari (Ex.P1-4W1/41), affidavit dated 17.05.2006 (Ex.P1-4W1/40, filed in

WP (C) No. 4070/2006) (affidavit of one A.K. Singh, Collector/ADM, South Delhi) and Khasra Girdawaris (Ex.P1-4W1/41) amply proved the

fact that the respondents were in possession of the acquired land.

22. Thus the main contention of the respondents before the Reference Court was that they were the recorded owners and it was not open for the

Reference Court to have reopened the issue of validity of the sale deed dated 24.11.1956 as the reference was not in the nature of a civil suit. The

sale deed and Jamabandi were in consonance with each other and the evidences of the witnesses offered on behalf of the respondents proved

beyond doubt that they were in possession of the land and after acquisition they handed over the land to the Government. On the other hand, none

of the appellants nor other interested persons offered any evidence regarding their being in possession of the acquired land.

23. Apart from this, what was heavily relied upon was that in the previous acquisition and consequent reference under Section 30 & 31 of the

Land Acquisition Act (pertaining to land measuring 25 Bighas and 4 Biswas which was acquired vide award No. 2059), the compensation

towards the acquired land was awarded to the respondents. The issues raised by the appellants, therefore, were hit by the principle of res judicata.

24. After applying its mind over the rival contentions of the parties, the Reference Court framed two issues namely:

(i) to what share in compensation each of the IPs of the land in question is entitled to?

(ii) what would be the relief?

25. The Reference Court answered the above posers as hereunder:

8.6. There are juxtaposition claim with regard to possession, as on the one side IPs No. 14 claim the possession of subject land with them and on

the other side of IPs, they claim it is an open land and possession is with the Mandir Shree Kalakaji. There are oral version as well as documentary

record. The documentary record is in the form of demarcation report dated 17.9.1989 (Ex. PW1/24), Khasra Girdwari (Ex. P1-4W1/41),

affidavit dated 17.5.2006 (Ex P1-4W1/40, filed in WP(C) No. 4070/2006) of Shri A.K. Singh, Collector/ADM South Delhi accompanying

Khasra Girdwari (Ex P1-4W1/41. The Khasra Girdwari (Ex. PW1-4W1/41) (of 24.01.04 to 24.3.2005) and Khasra Girdwari (Ex. PW1-

4W1/41) (of 26.10.04 to 16.3.2006) demonstrate name and possession of subject land 2-16 with IPs No. I-4. The demarcation report (Ex.

PW1/24) and Khasra Girdwari (Ex. PW1/41), contain relevant features, they are taken for discussion. The demarcation report was prepared in

Case No. 285/1989, it depicts that land measuring 2-16 biswas in possession of applicant, it was identified and demarcated, moreover on its

southern side possession of Shamlat Thok Jogian and Brahaman was found, which is on land measuring 5-10. In Khasra Girdwari (Ex. P1-

4W1/41), there are two entries, the first entry is in respect of subject land of 2-16 (of Khasra No. 621/2/3/2/2/1 min) in favour of IPs No. 1 to 4

and another entry is in respect of land 0-10 (of khasra No. 621/2/3/2/2/2) in favour of Shamlat Thok Jogian and Brahamans. To say, the subject

land was in possession of IPs No. 1 to 4 and not in possession of any of other IPs. In addition, IPs No. 16, 19, 22, during arguments, placed

reliance on report in Suit No. 268/2003, whereby the court of Additional District Judge, Delhi called status report from SDM Kalkaji, who

reported about khasra No. 626min, 1202/627, 634 min, 624, 625, 1201/607 and 1203/607 vis-a-vis land acquired therein and the land of 83-07

was left, belonging to Shamlat Thok Bramans and Thok Jogian, each having half share as per jamabandi; there is no ownership of Mandir Shree

Kalkaji. This feature, again, does not support the case of IPs No. 5 to 93.

There is no scope before reference court to re-open the case whether Mahant Prithi Nath had lacked authority to execute sale deed, but the

record maintained in the form of jamabandi, khasra girdawari is to be accepted in favour of IPs No. 1 to 4. The sale deed and the Jamabandi do

not contradict each other, as subsequent development were recorded in the form of mutations. The case laws presented by IPs No. 1 to 4 applies

in their favour.

8.7 Since, IPs No. 1 to 4 were in possession of subject land, therefore, the testimony witness/P1-4W1 stand proved that possession was handed

over to Collector by them. There is no other evidence by other IPs to prove that land being open was not in possession of IPs No. 1 to 4 or land

was handed over to Collector by such IPs, who are other than IPs No. 1 to 4. The evidence of IP No. 32 through his witnesses is on the aspect to

which sect he belongs and to make/show claim of his ratio while descending from his predecessor in interest.

8.8. It is settled law that when there are claimants seeking apportionment of their claim, under Section 30 of the Act, 1894, they are required to

establish title affirmatively and in the absence of proof of title, they are required to prove effective occupation or possession. In case either of it is

not established, one cannot get share in the compensation. The prima facie title to the compensation is with the person/party, who is in the sole and

exclusive possession of the lands at the time of its acquisition by the Government and onus is lies on the party claiming that he has a better title to

such compensation to prove such title.

The IPs No. 1 to 4 has established the standard/criteria of recorded owners in possession of subject land and possession was handed over by

them to the Government. They have proved their claim and issue No. 1 in their favour, IPs No. 1 to 4 are entitled for compensation amount

equally. The petition/claim of IPs No. 1 to 4 is allowed. The compensation amount is to be apportioned IPs No. 1 to 4 equally.

The other petitions/objections/claims of others IPs No. 5 to 93 could not prove issue No. 1 in their favour, therefore, their claims are dismissed.

Accordingly, issue No. 1 and offshoots of issue No. 1 stand answered.

8.10 Issue No. 2 - Relief in view of findings given on issue No. 1 above, the petition/claim of IPs No. 1 to 4 is allowed. The compensation amount

with accrued interest is to be apportioned amongst IPs No. 1 to 4 equally.

The other petitions/objections/claims of others IPs No. 5 to 93 are dismissed. However, both the parties will bear their own costs. Decree sheet

be drawn accordingly.

9. Accordingly, the reference under section 30/31 of the Act, 1894 stand answered. Copy of this judgment be sent to Land Acquisition Collector

for information and action.

26. Thus from the records, what can be deduced is that by virtue of a sale deed dated 24.11.1956, which was never declared null and void,

respondent No. 1 became the owner of the land. The mutation of the land in favour of respondent No. 1 in 1962 was also not challenged. Later,

the lands were mutated in the name of other respondents as well. The revenue records from 1962 till the date of acquisition has remained inviolate

and the possession and title of the respondents have never been disputed till the present proceedings. In the earlier acquisition proceedings (Award

No. 2059), the respondents were the recipients of the compensation.

27. The fact that the possession of acquired land was taken by the Government from respondent nos. 1 to 4 on 28.10.2003 and out of several

transfers made by Mahant Prithi Nath in favour of others including respondent No. 1, none was ever challenged or declared as null and void,

amply prove the fact that respondent nos. 1 to 4 had the right, title and possession over the acquired land and therefore only they were entitled to

compensation. The revenue entries reflect possessory rights inhering in respondent nos. 1 to 4. The Land Acquisition Collector as well as the

Reference Court, therefore, have rightly awarded the compensation to the respondents.

28. In Premwati v. Union of India, 2009(5) AD (Delhi) 779, the Supreme Court had held that for grant of compensation, what is required to be

seen is that the interest of the claimant in land remains and he has possessory rights.

29. Similarly, in Shri Jai Kishan v. Union of India and ors., 2006(129) DLT 745, the Delhi High Court reiterated the proposition that in

preference to all others, a recorded Bhumidar has a legal right to receive the compensation for the land acquired.

30. Again, in Kalawati v. Union of India, 2009(157) DLT 112, the Division Bench of Delhi High Court held as hereunder:

17. However, in the present case it is not necessary to decide this issue at all. Reason is simple. The judgment of the learned ADJ needs to be

affirmed for other reasons, about which there is hardly any challenge. In the facts of this case, where the appellant was not concerned with the land

after her marriage, it is the respondents No. 2 to 4 who remained in cultivatory possession thereof and became bhumidars under the provisions of

the Land Reforms Act. Even the land stands mutated in their name. It is this Act which governs the field and on the basis of rights accrued to the

persons in possession of the land under this Act that the compensation payable to them would be determined. There is no concept of ""ownership

over the land in the scheme of the Land Reforms Act. The compensation under the Land Acquisition Act is payable to the bhumidars declared as

such under the Land Reforms Act. On that reckoning, it is the respondents who would be entitled to compensation to the exclusion of the

appellant.

(emphasis provided)

31. While deciding about the application of principles enunciated in the judgment of the Supreme Court in Sardar Amarjit Singh Kalra and ors.

v. Pramod Gupta and ors., 2003(3) SCC 272 and dealing with the conduct of the parties for deciding as to who would be competent to receive

compensation of the acquired land, a Bench of this Court in Sri Chand v. Land Acquisition Collector and anr., 2005(118) DLT 320, held as

hereunder:

9. Delhi Land Reforms Act is a special statute and would be applicable in regard to payment of compensation to a person who holds the land in

terms of the provisions of that Act. The Court relied upon another judgment of the Punjab High Court in Gopi Chand and ors. v. Smt.

Bhagwani Devi, AIR 1964 Punjab 272, with respect we follow the view and reject the contention raised on behalf of the petitioner that Bharat

Singh has no right to receive the compensation in face of the objections filed by the objector. The learned counsel appearing for the petitioner while

relying upon the judgment of Supreme Court in Sardar Amarjit Singh Kalra and ors. v. Pramod Gupta and ors.,2003 (3) SCC 272

contended that maxim Ubi jus ibi remedium Court should aim to preserve and protect the right of the parties and the Land Acquisition Collector

ought to have determine the entitlement and apportion the compensation amongst all the persons interested. This proposition of law cannot be

disputed. The Collector could protect and preserve the rights of the parties and ensure apportionment of the amount of compensation between the

interested persons provided they were all interested persons and as per law. If a claimant or an objector submits an application which suffers from

a patent legal defect of his very right to raise claim of apportionment then no fault can be found with the Collector in this regard. It is a conceded

case before us that the judgment of the Division Bench of this Court was taken in appeal before the Supreme Court and which was subject matter

of S.L.P. No. 14020/2002 which was dismissed on 16th August, 2002. As such this judgment and the statement of law therein has attained

finality. The learned counsel appearing for the respondent No. 2 also contended that the application suffers from delay and latches and also that the

Collector was not justified in entertaining the application which itself was beyond the prescribed period and could not have discussed the merits of

the case. In our view the respondent cannot raise this plea in the present writ petition inasmuch as the Collector has passed the impugned order in

furtherance to the direction issued by the Division Bench of High Court in WP(C) No. 12193/2004. As far as controversy with regard to the other

objections mentioned in the application of the petitioner before the Collector, it is not necessary for us nor are we called upon to decide those

controversies in the present writ petition. Suffice it to say that the order passed by the Collector is in consonance with the settled principles of law

and does not call for any interference. It is also true that the notification under Section 4 for acquisition of land was issued on 22nd August, 2001

and the award was passed on 25th November, 2003. The petitioner filed the application before the Collector only on 10th February, 2004 for all

this period right from his birth in the year 1954 and keeping in view the facts averred in the counter affidavit by his father that for years he had

severed all relations with his family, still he took no steps before any Court of a competent jurisdiction to enforce his claim of being a coparcener in

the property in question. These facts we have only noticed for the purpose of illustrating the conduct of the petitioner for all this period which by

itself would be a ground for denying him any equitable relief in exercise of the jurisdiction vested in this Court under Article 226 of the Constitution

of India.

(emphasis provided)

32. The appellants or other interested persons did not ever try to establish their title to the property. Whenever one seeks to establish his title to the

property in the event of the other person claiming it either through a decree or an instrument in his name, such decree or instrument, an

insurmountable obstacle, has to be dealt with and annulled. The appellants or other interested persons have not sought any declaration of sale deed

dated 24.11.1956 (by virtue of which respondent No. 1 came in possession of the land) to be void and therefore, capable of being rescinded.

33. Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a

written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury,

can sue to have it adjudged void or voidable and the Court may in its discretion so adjudge it and order it to be delivered or cancelled.

34. There is a further necessity of filing such suits for rescission of a sale deed within the time frame set by the law of limitation. It is well settled by

now that provisions of Limitation Act would apply in such cases.

35. Thus, the appellants would be, and rightly have been precluded from raising the issue that the sale deed under which the respondents claimed

to be the owners of the property, was bad and therefore void. It is precisely for this reason that the Reference Court did not open the issue of the

validity of the sale deed dated 24.11.1956. There is a presumption that a registered document is validly executed. A registered document prima

facie would be valid in law and the onus to prove to the contrary would be on a person who leads evidence to rebut such presumption. No such

evidence has been led by the appellants or other interested persons before the Reference Court.

36. Learned counsels appearing for the appellants in both the appeals have stated that the Supreme Court in S. Amarjit Singh Kalra (dead) by

L.Rs. and ors. v. Pramod Gupta (dead) by L.Rs. and ors., 2003(3) SCC 272 and Arulmighu Lakshminarsimhaswamy Temple

Sngirigudi v. Union of India and ors. 2010 (10) SCC 417 has held that a claimant is required to conclusively prove his right and title in the

property by establishing the legality and validity of the origin and source of his right and title and, therefore, the Reference Court was under an

obligation to finally decide the issue of title, which was not done in the present case.

37. It is further contented that the revenue records produced by the respondents for the year 1949 - 1950 show the land of 189-10 as ""Gair

Mumkin Pahar"". It was asserted by the appellants that after the promulgation of Delhi Land Reforms Act, 1954 (hereinafter referred to as the

DLRA), the subject land could not have been the part of the ""holding"" of any individual and would vest in the Gaon Sabha, in view of the

provisions contained under Section 154 of the DLRA, 1954. It was thus submitted by the appellants that the judgment of the Reference Court was

not sustainable as the aforesaid issue was left completely open and unaddressed.

38. The contention of the appellants appear to be absolutely misconceived. The question of vesting of land in Gaon Sabha can only be inquired into

by a Revenue Court as that is the court of appropriate jurisdiction. The jamabandi on record shows that the respondents are the recorded owners

of the subject land, which factual position has stood unrebutted and unchallenged for a long period of time. There is no other order, on record, in

terms of Section 7 of the DLRA divesting the respondents of their rights in the subject land and vesting it in the Gaon Sabha. Even the revenue

records mention the names of the respondents as owners, and not the Gaon Sabha, till the date of acquisition. Thus, prima facie, it appears that the

subject land vested with the respondents.

39. For the reasons afore stated, no fault could be laid with the Reference Court in not reopening the issue of the validity of the sale deed of

24.11.1956.

40. Learned counsel appearing for the respondents, on the other hand, and in addition to the submissions forwarded for consideration of this

Court, urged that at the time of admission of the present second appeal, the appellants made a categorical assertion that they were not aggrieved

by the impugned judgment but only with the fact that compensation in respect of the acquired land was wrongly disbursed amongst respondent

nos.1 to 4 and it should have been given in favour of Mandir Shree Kalkaji. It was also submitted on behalf of the appellants that the litigation

pending before the Supreme Court regarding Mandir Shree Kalkaji would impact the rights of the respondents and the Temple to receive the

compensation in question.

41. The extract of order dated 30.09.2014 of this Court is being reproduced for ready reference.

LA.APP. 349/2014 and C.M.No. 16556/2014 (Stay) Notice.

Mr. Rajesh Yadav, Advocate, accepts notice on behalf of respondent Nos. 1 to 4. Mr. S.K. Pathak, Advocate, present in the Court, has been

called upon to appear on behalf of respondent No. 5.

Respondent Nos. 6 to 92 are stated to be proforma parties and therefore, requirement of issuance of notice to these respondents is dispensed

with.

Learned counsel for appellants submits that appellants are not aggrieved by the impugned judgment but the compensation awarded must go to

Kalkaji Temple and not to respondent Nos.1 to 4. It is pointed out that the litigation pending before the Apex Court regarding Kalkaji Temple

impacts the rights of respondents and the Temple to receive the compensation in question. This is disputed by learned counsel for respondent

Nos.1 to 4.

Learned counsel for respondent Nos.1 to 4 cites a Division Bench judgment reported in ILR 1971 (1) Delhi 59 to contend that the ad valorem

court fee is required to be paid in an appeal arising out of proceedings under Section 30 of the Land Acquisition Act.

Learned counsel for appellants seeks time to go through this citation and to make submissions on this aspect. Considering that the pending litigation

before the Apex Court impacts this appeal as well, status quo as of today, in respect of impugned order be maintained by the parties. Renotify on

22nd December, 2014.

Copy of this order be given dasti under the signatures of Court Master to counsel for parties.

42. The respondents submit that at the stage of hearing, now, the appellants cannot change their stand and in the event of Mandir Shree Kalkaji,

neither being the claimant nor having been impleaded, the judgment of the Reference Court could not be assailed by the appellants.

43. It is submitted that such shifting of stand is not permissible in law. A Court of law cannot grant a relief to a person which is not claimed and

which does not flow from the facts of the case or from the cause of action stated in the original proceedings. The claim of grant of compensation to

Mandir Shree Kalkaji was not there in the original objection of the appellants.

44. A reference was made to a decision of the Supreme Court in Bachhaj Nahar v. Nilima Mandal and anrs., (2008) 17 SCC 491 wherein

the Supreme Court has examined the relevance and purpose of pleadings and issues, which is reproduced as hereunder:

10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of

litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the

pleadings and which was not the subject-matter of an issue, cannot be decided by the court.

(ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief

which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.

11. The Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so

elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or

further litigation should not be a ground to flout the settled fundamental rules of civil procedure. Be that as it may. We will briefly set out the

reasons for the aforesaid conclusions.

12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases

being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be

raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its

consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be

met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on

particular causes must take.

13. Ã¯Â¿Â½Ã¯Â¿Â½..

14. Ã¯Â¿Â½Ã¯Â¿Â½..

15. Ã¯Â¿Â½Ã¯Â¿Â½

16. Ã¯Â¿Â½Ã¯Â¿Â½

17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific

terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the

parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in

exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the

parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of

resorting to the exception to the general rule does not arise. The principles laid down in Bhagwati Prasad AIR 1966 SC 735 and Ram Sarup

Gupta (1987) 2 SCC 555 : AIR 1987 SC 1242 referred to above and several other decisions of this Court following the same cannot be

construed as diluting the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is

not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises

the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties

proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out

such a case not pleaded, suo motu.

45. Similarly in National Textile Corporation Limited v. Naresh Kumar Badrikumar Jagad and ors., (2011) 12 SCC 695, the Supreme

Court held as hereunder:

12. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of

help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce

appropriate evidence on the said issue. It is a settled legal proposition that ""as a rule relief not founded on the pleadings should not be granted"". A

decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute

between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide Trojan & Co. v. Nagappa Chettiar AIR

1953 SC 235, State of Maharashtra v. Hindustan Construction Co. Ltd. (2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207 : AIR 2010 SC

1299 and Kalyan Singh Chouhan v. C.P. Joshi (2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656 : AIR 2011 SC 1127.

13. In Ram Sarup Gupta v. Bishun Narain Inter College (1987) 2 SCC 555 : AIR 1987 SC 1242 this Court held as under: (SCC p. 562,

para 6) ""6. Ã¯Â¿Â½ in the absence of pleading, evidence, if any, produced by the parties cannot be considered. Ã¯Â¿Â½ no party should be permitted to

travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it.

Similar view has been reiterated in Bachhaj Nahar v. Nilima Mandal (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927 : AIR 2009 SC 1103 .

14. In Kashi Nath v. Jaganath (2003) 8 SCC 740 (SCC p. 745, para 17) this Court held that where the evidence is not in line with the

pleadings and is at variance with it, the said evidence cannot be looked into or relied upon. Same remains the object for framing the issues under

Order 14 CPC and the court should not decide a suit on a matter/point on which no issue has been framed. (Vide Biswanath Agarwalla v.

Sabitri Bera (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695 and Kalyan Singh Chouhan (2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656 :

AIR 2011 SC 1127.

15. In Syed and Co. v. State of J&K 1995 Supp (4) SCC 422 this Court held as under: (SCC pp. 423-24, paras 7-8) ""7. Ã¯Â¿Â½ Without specific

pleadings in that regard, evidence could not be led in since it is a settled principle of law that no amount of evidence can be looked unless there is a

pleading.

8. Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible.

16. In Chinta Lingam v. Govt. of India (1970) 3 SCC 768 : AIR 1971 SC 474 this Court held that unless factual foundation has been laid in

the pleadings no argument is permissible to be raised on that particular point.

17. In J. Jermons v. Aliammal (1999) 7 SCC 382 while dealing with a similar issue, this Court held as under: (SCC p. 398, paras 31-32) ""31.

Ã¯Â¿Â½ there is a fundamental difference between a case of raising additional ground based on the pleadings and the material available on record and a

case of taking a new plea not borne out by the pleadings. In the former case no amendment of pleadings is required whereas in the latter it is

necessary to amend the pleadings. Ã¯Â¿Â½

32. Ã¯Â¿Â½ The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision.

18. In view of the above, the law on the issue stands crystallized to the effect that a party has to take proper pleadings and prove the same by

adducing sufficient evidence. No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of

the same.

19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however,

a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the

proceedings. [See Sanghvi Reconditioners (P) Ltd. v. Union of India (2010) 2 SCC 733 : AIR 2010 SC 1089 and Greater Mohali Area

46. The respondents have also seriously disputed the fact that the litigation pending before the Supreme Court can impact the subject matter of this

appeal. It has been categorically stated that the statement made by the appellants in the beginning was erroneous and not borne out by the records.

47. Thus, to tie the strings together, what has been argued by the respondents is:

i. The appellants are not aggrieved by the contents of the judgment but only with the fact that the compensation was not given to Mandir Shree

Kalkaji and Mandir Shree Kalkaji was neither a claimant nor was impleaded in appeal and efforts to implead Mandir Shree Kalkaji did not

succeed till the Apex Court;

ii. The pending litigation before the Supreme Court does not impact the subject matter of the present land acquisition appeal;

iii. The revenue records demonstrate that the respondents are the recorded owners of the land in question;

iv. From the Jamabandi (Ex.IP-1-4W-1/12), it could be discerned that there had been several transfers by the vendor of the respondents and none

of such transfers have either been rescinded or annulled;

v. The respondents were granted compensation with respect to the earlier acquisition of land falling under the same block which was earlier

purchased by respondent No. 1; and

vi. Consequently, all evidences are in favour of the possessory rights of the respondents, entitling them to the entire compensation of the acquired

land.

48. The contention of the appellants are only two fold; viz. the sale deed of 24.11.1956 is clouded with doubts and uncertainty and that in the

event of the land being ""Gair Mumkin Pahar"", it could never have been in the ""holding"" of the respondents but would have had vested in Gaon

Sabha. Additionally, it was submitted on behalf of the appellants, that in the suit which was filed by the appellants for seeking rescission of the sale

deed dated 24.11.1956, the Civil Court was of the opinion that the issue could be agitated before the concerned authority under the Land

Acquisition Act as it was a self-contained Code and for all practical purposes, the concerned authority exercised the powers of a Civil Court.

49. The appellants have not been able to demonstrate their right, title or interest in the acquired property, which obligation, the respondent nos.1 to

4 have successfully discharged.

50. For the reasons afore stated, namely the unrebutted and unchallenged existence of sale deed dated 24.11.1956 which is of a long antiquity and

the law of limitation being applicable to any suit for rescission of a sale deed, the judgment of the Reference Court is hereby upheld and affirmed.

51. The appeals are, therefore, dismissed.

CM Appln. 16556/2014 & 10938/2016 in LA.APP.349/2014 & CM Appln. 10937/2016 & 21115/2014 in LA.APP.410/2014

1. In view of the appeals having been dismissed, the applications have become infructuous.

2. The applications are disposed of accordingly.