

In The Court of Sh. Sanatan Prasad,
Additional District Judge-01, (East),
Karkardooma Courts, Delhi.

Ex. (New) No.175/16, Old No.27/2011

In the matter of :-

Sh. Radhey & Ors.

.....DHs

Versus

Union of India

.....JD

ORDER

1. Vide this order, I shall dispose of objections, filed on behalf of Union of India/LAC/ADM(East) on 07.01.2015. It is averred that the present execution petition has been filed by the petitioner, for executing the order, dated 07.12.2000, passed by the Hon'ble High Court in RFA No.591/1988, wherein the compensation @ Rs.345/- per sq. yards, was awarded. The DH had already filed execution petition, bearing No.669/06, pursuant to the order of Hon'ble High Court, dated 07.12.2000 and it was made clear by the Hon'ble Court that DH is entitled to compensation @ Rs.80,377.50 per bigha, which fact is also fortified by the order dated 17.03.2007, passed by the executing court. The execution No.669/06, was disposed off, by the Court, vide order dated 20.03.2007, wherein the Court categorically, held that "*petition stands disposed off, as satisfied.*" The DH has never raised any objection to the orders, dated 17.03.2007 and 20.03.2007, nor challenged the same before any higher forum, as such, the orders dated, 17.03.2007 and 20.03.2007, became final. Further, the petitioner has accepted the payment @ Rs.80,377.50 per bigha without any demur or objection and now, it is not open to seek fresh execution @ Rs.3,45,000/- per

bigha. The land, situated in Village Kondli, was notified, vide notification U/s 4 of LA Act, on 25.02.1981, for the public purposes, namely, “Construction of Sewage Treatment Plant”, which was followed by declaration U/s 6, dated 29.09.1981 and after following the due process of law, the award No.57/1981-82, was announced. In his award, the Land Acquisition Collector, had assessed, the market value @ Rs.8,000/- per bigha and being dissatisfied with the assessment, the persons interested, had preferred the reference, U/s 18 of the Act, which was referred to the Reference Court under various references and in the present matter, the Reference Court, had assessed the market value @ Rs.10,000/- per bigha. Upon petition to Hon'ble High Court, in the leading case of *Harpur v. Union of India*, the Court had fixed the market value @ Rs.3,45,000/- per bigha, i.e., Rs.345/- per sq. yards against Rs.8/-, as awarded by the Land Acquisition Collector and Rs.76,500/- per sq. yards (Rs.10,000/- in the present matter), awarded by the Reference Court and the said case was decided on the basis of another case of *Sh. Anil Kumar v. Union of India*, in respect of village Kondli. The Union of India, had challenged the judgment before the Hon'ble Supreme Court and the said Court in case of *Union of India v. Harpur*, had set aside the enhancement, granted by the Hon'ble High Court and reduced the compensation @ Rs.76,500/- per bigha, as awarded by Ld. ADJ. In *Delhi Development Authority v. Bali Ram Sharma*, the Hon'ble Supreme Court, had further granted 5% escalation. The DH

herein, had preferred a reference U/s 18 of the Act, which was referred to the Reference Court. They also preferred an appeal before Hon'ble High Court U/s 54 of Act, which was registered as RFA No.591/1988 and was disposed off, vide order and judgment, dated 07.12.2000, in terms of decision of *Anil Kumar Sharma v. Union of India* and fixed the market value @ Rs.3,45,000/- per bigha. The Union of India, had preferred an appeal, against all other judgments, decided on the basis of Harpat and Others, before Hon'ble Supreme Court, which were registered as Civil Petition Nos.4202/2004, 2368/2006, 2369/2006, 2370/2006, 2371/2006, 2373/2006, 2374/2006 & 2375/2006 and vide order, dated 12.05.2009, the Apex Court had allowed the above-mentioned petitions, however, in the present case, due to inadvertence, the SLP was not preferred before the Apex Court, thereafter, on realizing the non-filing of the appeal in the above said case, the SLP was filed and was dismissed, being time barred. The Land Acquisition Collector had issued notices, U/s 9(2) of the Act, to the DH, which were duly served upon them and pursuant thereto, the DH had filed their claims before the Land Acquisition Collector, claiming compensation @ Rs.25000/- per sq. bigha, for the land, of which, Ld. Reference Court took the note in para No.1 of its judgment/award, so, DH is not entitled for any compensation over and above of this claim. The land in question was acquired under the provisions of LA Act and award was announced on 31.03.1982, thus, the provisions of unamended Section 25 of the

LA Act, prior to its amendment in 1984, are applicable. In the present case, the award in question had been announced by the Land Acquisition Collector on 30.09.1982 and as per law laid down by the Apex Court in case of *Krishi Utpadan Mandi Samiti v. Kanhaiya Lal*, reported as 2000 (7) SCC 756, the provisions of Section 25, before amendment, is a substantive provision of law and would apply to all the cases where the award has been made by the Collector till 24.09.1984 and the same view was reiterated and affirmed by the Hon'ble Court in case of Land Acquisition Officer-cum-DSWO v. B.V.Reddy & sons, reported as 2002 (3) SCC 463 and said provision being amended, applies only after w.e.f. 24.09.84 and when the applicant has refused to make such claim or has omitted without sufficient reason to make such claim, the amount awarded by the court shall in no case exceed, as awarded by the Collector. Admittedly, in the present case, DH was duly served with the notice U/s 9(2) of the Act and he filed the claim, claiming Rs.25,000/- per bigha, pursuant to notice U/s 9(2) of the Act. It also appears that Sh. Mridul Jain, Ld. Erstwhile Counsel for the Union of India has further, placed on record the copies of the statement of the claim, made by the decree holders and also of the notices issued to the decree holders, alongwith their translated English also original Urdu version/(s) and has also drawn my attention to the paragraph No.1, of the Award of the Ld. Reference Court, to show that the DHs, in any case, claimed compensation @ Rs.25,000/- per bigha only, which is clear from

judgment/award, dated 30.09.1982 and further judgment of the Ld. Reference Court, dated 24.11.1987, therefore, DHs could not have been granted an amount, in excess to their claim, which is beyond jurisdiction of the Court. The Hon'ble High Court, held in case of Kanta Devi Mittal & Others v. UOI, reported as 119(2005) DLT 682(DB) and Hari Chand v. UOI, reported as 2009(113) DRJ 804, that merely because the Reference Court has decided the petition U/s 18 of Act, does not mean that the said decision ought to be treated as an award. The Hon'ble Supreme Court had occasion to assess the market value of the land, situated in the same village, namely Kondli, which was acquired, vide same notification and award and Court had fixed the market value of the land, situated in the same village @ Rs.76500/- per bigha, in DDA v. Bali Ram Sharma and while adopting the same rate, it was informed by the parties that decision of Bali Ram's case has attained finality before the Apex Court. In view of law, laid down by The Apex Court, in case of Kunhayammed v. State of Kerala, reported as 2000(6) SCC 359, which was reiterated in case of A.V.Pappaya Sastry v. Govt. of A.P. (2007) 4 SCC 221, this court is empowered to consider the present objections. In a similar situation arising and question, arising under Section 23(1A) of the LA Act, considered by the Apex Court in cases of Jaipur Development Authority v. Mahabir Housing Coop. Society, reported as 1996(11) SCC 229, Union of India v. Swaran Singh, reported as 1996 (5) SCC 501 and Urban Improvement Trust, Jodhpur v. Gokul Narain 1996

(4) SCC 178 and in these cases, the government had belatedly challenged the grant of additional benefit under Section 23(1A), of the LA Act, in respect of the award, made prior to the appointed date and the decree so made, was not challenged, at the relevant point of time and it was contended that the government, having allowed the decree, which became final, cannot challenge the same at that belated stage. The Court had rejected the contentions and held that grant of additional benefits, under these circumstances, is without jurisdiction, and as such, the same is nullity and *non est* and applying the principles, laid down, in case of Land Acquisition Officer-cum-DSWO v. B.V.Reddy & Sons, reported as 2002(3) SCC 463, the Court has no jurisdiction to allow the excess amount, as claimed by the DH and prayer is made for dismissal of the execution petition.

2. Reply to the objections, was not filed, on behalf of DH till date and Sh. Gaurav Puri, Id. Counsel for DH, has submitted that the written arguments dated 09.06.2017, as submitted by him, should also be read as reply to the objections too, besides, written arguments and it further appears that the LAC / Union of India has also submitted written submissions/brief synopsis, dated 14.10.2017 rebutting therein, that the case of the objection fell within the unamended Section 25(1) and not 25(2) of the Act and even Principles of Res-judicata bars the second execution petition and since the objections go to the root of the inherent lack of jurisdiction with the Court, therefore, they can

be raised at any stage and in any proceedings, in the matter and it would not be out of place to note here that even the previous counsel for DHs Sh. Shashindra Tripathi, has addressed arguments, at two dates of hearing, at the instance of this Presiding Officer, as the matter was earlier being dealt by him and there are many pleadings, made by him, since the matter was dealt by him, even before Superior Courts, therefore, Sh. Jain had not objected to such addressing of arguments, as he was also of the view that the matter is an old one and complicated facts have to be understood by this Court, only in the right earnest.

3. It appears that in a pleading/application, prayer made on behalf of the DHs and filed through Sh. Tripathi, on 24.01.2013, alongwith list of the documents of even date, a certified copy of the order, dated 14.01.2013, at page (5-7), has been enclosed and referred as “Annexure P-1”, (though certified copy of the order itself does not bear such mark as “Annexure P-1” on itself), and it further appears that an application also copy of memo of parties, filed in SLP No.1641 of 2013, titled as Delhi Jal Board through its Chief Executive Officer, Varunalaya, Jhandewalan Extension, New Delhi, (NOT A PARTY), v. Union of India & Ors. and copy of screenshot of mobile phone, mentioning therein, the details / diary No.35500/2012 filed on 20.10.2012, of the above SLP No.1641/2013, (registered on 07.01.2013), also of the SLP No.1904/2013, (registered on 14.01.2013), has been filed in the Court on 04.11.2020 and on

behalf of the DHs to claim that the SLP filed by the JD has been dismissed by the Hon'ble Supreme Court, vide, the above order, dated 14.01.2013, however, the order itself appears to have been passed in CC No.23622/2012, arising out of judgment and order, dated 07.12.2000, in RFA No.266/1999, of Hon'ble High Court of Delhi, titled as Delhi Jal Board v. U.O.I. & Ors., alongwith nine other SLP. (C), bearing Nos.1720/2013, 1768/2013, 1771/2013, 1896/2013, 1898/2013, 1904/2013, 23636/2012, 23637/2012 and 55/2013 in SLP(C) No. 001641/2013 with CC No.001904/2013, registered on 14-01-2013 which pertains to item No. 6 in the memo of the parties attached to the Order and the same SLP was directed against the judgment and decree passed in RFA No. 266/1999, dated 07.12.2000, by the Hon'ble High Court of Delhi and it further appears that the same order pertains to the judgment and decree dated 07.12.2000, passed by the Hon'ble High Court of Delhi in RFA No. 689/1988, dated 07.12.2000 as well as RFA No. 55/2001, dated 10.01.2002, however, in the present case, the order/judgment and decree dated 07.12.2000 was passed by the Hon'ble High Court of Delhi in RFA No. 591/88, therefore, the order dated 14.01.2013, passed by the Hon'ble Supreme Court in above SLP/CC No. 1904 of 2003 does not pertain to the order passed by the Hon'ble High Court, dated 07.12.2000, in RFA No. 591/88, in the present matter, thereby, dismissing the SLP, preferred by the Delhi Jal Board. While drawing my attention to the paragraph No.4 of the Order passed by this Court on 22.09.2018, Sh. Jain,

submits that therefore, in this eventuality, there is no requirement for asking the respondents/JDs to submit copies of the application/(s) for condonation of delay, moved before the Hon'ble Supreme Court, accompanying the respective SLP/(s) as listed in the memo of parties in CC No. 23622/2012, directed against the judgment and decree dated 07.12.2000, passed in RFA No. 266/1999 between the same parties, also RFA NO. 689/1988 and 55/2001 and therefore it is clear that the memos/diary numbers, now, being filed by the Ld. Counsel for the DH, though pertains to SLP Nos. 001641/2013 with CC No. 1904 of 2013, listed at item No. 6 in the order dated 14.01.2013 of the Hon'ble Supreme Court, has no bearing with the present execution petition, yet, his further reliance is placed on :-

a) Hari @ Hari Singh v. Union of India, passed in RFA No.100/2000 and RFA No.481/1998, by Hon'ble High Court of Delhi, DOD : 06.04.2004;

b) Kunwarani Mrs. Meenakshi Khurana v. UOI, passed in RFA No.263/2000, by Hon'ble High Court of Delhi, DOD : 25.01.2010; And on the strength of above two decisions of the Hon'ble Superior Courts, he contends, that in any case, compensation can't exceed more than the rate of compensation claimed by the D.H., themselves @ Rs.25,000/- per bigha and as such the judgment & decree, dated 07.12.2000 can't be given effect to and therefore, unenforceable by this Court.

4. I have heard ld. counsels for the parties and perused the record, also written arguments, submitted by the parties.

5. LAC (East) has filed objections for not enforcing the decree of the High Court on the ground that it is a nullity and was obtained by decree holder by committing fraud and concealment of facts. The plea is taken that LAC had issued a notice under section 9(2) of the Land Acquisition Act to the decree holder before passing of an award and that notice despite duly served has not been replied by the decree holder so as per section 25 of the Land Acquisition Act (prior to amendment), the only amount of compensation as fixed by the Collector is payable to the decree holders. The decree of the Hon'ble High Court awarding compensation at Rs.345/- per square yard instead of Rs.10/- per square yard, as fixed by the collector being violative of the pre-amended section 25 of Land Acquisition Act and against the specific provisions of Statute and is a nullity and cannot be enforced. The decree which is a nullity can be challenged at any stage, including in execution proceedings. Counsel for LAC relied upon case laws *Land Acquisition Officer Vs B.V Reddy (2002) 3 SCC 463*, *Kanta Devi Mittal Vs Union of India 119 (2005) DLT 682(DB)*, *Hari Chand Vs UOI 2009(113) DRJ 804*, *Hamza Haji Vs State of Kerala (2006) 7 SCC 416* and *Kunhayammed Vs State of Kerala AIR 2000 SC 2587*. I have gone through the case laws and also heard both the counsel and thus, objection application of LAC is being disposed off.
6. LAC is relying upon the notice under section 9(2) of Land Acquisition Act issued to the decree holder to base his objections.

7. The various judgment *SLAO vs Sanagonda AIR 1974 Karnataka 74*, *FCI vs S.N Nagarkar AIR 2002 SC 808*, *Lakhbir Chand vs LAC AIR 1979 Delhi 53*, *Rameshwar Das Gupta Vs State of UP AIR 1997 SC 410*, *State of H.P Vs Badri Nath AIR 1987, H.P 86*, *Vasudev Dhanjibhal Vs Rajabhal AIR 1970 SC 1475*, *Indraj Vs UOI 2010 VI AD (Delhi)511*, *Gurdev Singh Vs PNB AIR 1998 P & H 106*, *District Labour Officer Vs Veeraghante AIR 1931 Madras 50*, *Prasanna Kumar Vs State of Orissa AIR 1956 Orissa 114*, *Tara Prasad Vs Secretary of Stae AIR 1930 Calcutta 471*, *N.M Venkatarama Iyer Vs Collector AIR 1930 Madras 836*, *Hira Devi Vs Harinath AIR 1989 All 11*, *Bhawar Lal Bhandari Vs M/s Universal AIR 1999 SC 246*, *Velagapudi Vs District Collector AIR 1971, A.P 310*, *K.P Antony Vs Thandiyode Plantations AIR 1996 Kerala 37*, *SLAO Vs Shivaputa AIR 1974 Mysore 5*, *Jai Rout Vs Sabitri Dei AIR 1993 Orissa 251* and *Mohd. Yasin Vs Mohd. Yasin AIR 1992 All 44*, cited on behalf of decree holders lay down the law in brief that when notice under section 9 (2) of Land Acquisition Act is defective, invalid and illegal, then the bar of section 25 of Land Acquisition Act is not attracted and the compensation can be enhanced, even if the decree holder despite service of such defective or illegal notice has not filed any reply or claimed any specific amount. Law also says that 15 days clear time is required to be given to the land owners for filing the reply of

such notice and if clear 15 days time is not given, then that notice is invalid. It is also held in the above judgment that the day when the notice is served and the day when the appearance of the land owner for filing the reply is directed are to be excluded.

8. Sh. Mridul Jain, Id. Counsel for the Union of India / LAC has further relying on the notices, placed on record, as already mentioned, frankly, submitted that he would not even try to lead any evidence for the service of a valid notice, as contemplated, U/s 9(2) of the Act, rather, he places reliance and contends that the judgment and order, dated 24.11.1987 itself, in its paragraph No.1, states that the petitioners claimed compensation for the amount @ Rs.25,000/- per bigha. It appears that the reliance placed by the Id. Counsel is misplaced and in any case, far-fetched, as the portion of the paragraph relied on, never proceeds on the basis, if the amount, if claimed by the petitioners therein / present DHs, was pursuant to any valid notice, served upon them, meeting the requirements of Section 9(2) of the Act and the same is merely in the nature of a recital only and it would not be out of context to quote the whole para itself, making this aspect of the matter crystal clear and the para reads as under :-

“This a reference under section 18 of the Land Acquisition Act. The land of the petitioners situated in village Kondli and comprised in Khasra No. as shown in the statement under section 19 of the LA Act was acquired for public purposes i.e.

the construction of sewerage of Treatment plant. The LAC awarded the compensation @ Rs.3,000/- per bigha and Rs.4,000/- per bigha. The compensation so awarded has been dubbed as grossly inadequate and low inter alia on the grounds that the LAC did not consider the sale transactions of the area and also ignored the potentiality of the land as the building site; that the LAC also did not take into consideration that all the amenities of civic life like water, electricity, transport, nearness to school and hospital were available to the land much prior to the date of notification under section 4 of the LA Act; that the land was rich in fertility and yielded three crops in a year. The land could fetch Rs.25,000/- per bigha if sold in the open market and that is the amount of compensation claimed by the petitioners.”; It is also pertinent to note here that from the certified true copies of the proceedings of filing of claim, (page 13-16) and joint claim filed by the residents of Village Kondli, (page 17-18) and claim filed by the present DHs/erstwhile IPs, (page 19-20), the amount of compensation appears to have been claimed @ of Rs.100000/- per bigha alongwith the interest @ 6% from the date of notification, as the land in question is claimed to be capable of fetching a very high rate in the market even up to Rs.100/- per sq. yards. Thus, it is abundantly clear that the above recital does not proceed on the basis of service of any valid notice, to the petitioners', therein, therefore, though, the provisions of pre-amended Section 25 of the Act, are applicable to the Awards, made till 24.09.1984,

(31.03.1982 in the present case) but, they are not applicable in the present case for want of proof of the service of any valid notice on the DH, in terms of Section 9(2) of the Act and as such, this count of the objection, filed by the LAC, does not hold any water and falls flat.

9. I have carefully, further considered the rival submissions, made by the Ld. Counsels for the parties, on this aspect of the matter and it appears that in the written statement filed by UOI in reference Court, objection on this basis was never taken. It is also not a disputed fact that this particular objection was even not taken in the High Court and never raised even before the Supreme Court, as it has now, become clear that the Union of India, never went into an SLP, before the Hon'ble Supreme Court and dismissal of SLP, vide order, dated 14.01.2013, preferred by the Delhi Jal Board, was not directed against the judgment and decree, dated 12.07.2000, passed in RFA No.591/1988, pertaining to this case and the High Court passed the decree on 12.07.2000 and the SLP/C.C. bearing Nos.001641/2013 alongwith CC No.1904/2013, dismissed on 14.01.2013, does not pertain to this matter. Further, there is no other order whatsoever, passed by the Hon'ble Supreme Court, has been placed on record by any of the parties, which can be related to this matter. The present execution is pending since 2011 but the present objections have been filed in the court only on 07.01.2015 by raising plea of bar of Section 25 of Act for the first time. The delay and laches on the part of LAC itself are

sufficient to dismiss objection on this basis. No explanation has been given on behalf of LAC why so much delay happened in coming to the court with such objection.

10. Sh. Jain, further submits that the objections affecting the jurisdiction of the court can be taken at any stage, but the same does not appear to be true, as it was laid down in ***Harshad Chiman Lal Modi v. DLF Universal Ltd; AIR 2005 SC 4446*** that the law is well settled on the point that if, such objection is not taken at the earliest and in any case, at or before the settlement of issues, it can not be allowed to be taken at a subsequent stage, and more so, at the stage of the execution of the decree passed by the Hon'ble High Court
11. Executing Court cannot go behind the decree and has to execute the same as it is. These objections were not taken by LAC from Reference Court till Hon'ble High Court. Now, new facts and grounds cannot be taken on record to treat the decree as nullity and unenforceable, which has attained finality upto the Hon'ble High Court. Even also, when it is held hereinabove, that when there was no notice U/s 9(2) of the Land Acquisition Act proved to be issued and served legally and validly, as delineated, hereinabove in paragraph No.6, as above to the decree holder and even the notice relied upon is not legal and a valid one, then the objections taken in this regard becomes frivolous and vexatious. Otherwise also, the objection taken on this basis does not survive for the reasons that when such a plea is not taken before the Ld. Reference Court, and not even before

the Hon'ble High Court, then it can not now, be taken at this stage to nullify the judgment and decree passed by the Hon'ble High Court and as such they are not within the ambit and scope of Section 47 CPC and as such the case law cited on behalf of LAC are not applicable to the present facts and circumstances of the case to sustain the baseless, false and unfounded objection, filed by the LAC on this count and as such, the objections on this count are meritless and therefore, unnecessarily filed by the LAC, in this regard.

12. Sh. Mridul Jain, Ld. Counsel for the Union of India, has further relied on a decision of the Hon'ble High Court of Delhi, in the case of ***Deep Chand and Ors. v. Union of India***, in Ex. FA No. 9/2017 and also in the case of ***Rishipal Singh Verma and Others v. Union of India*** in Ex. FA No. 8/2017, D.O.D. 26.04.2017, to contend that the DHs are stopped to claim further payment in terms of the decree, dated 07.12.2000, as they themselves accepted the payment @Rs.80,377.50 per bigha and thus, the Rule of Estoppel is sought to be invoked on the strength of the present decision, however, the decision is of no help to the JD, on the perusal of its below-noted portion of paragraph No. 9:-

“.....In fact, in spite of the dismissal of the SLP in the case of the appellants/decreed holders by the order dated 28.7.2003 of the Supreme Court, the appellants/decreed holders got their execution petition disposed of on 7.4.2005 inasmuch as by 7.4.2005 the Supreme Court had decided the case of Bali Rama Sharma(Supra), and which was decided on 3.8.2004.

*thereby reducing the compensation granted by the High Court from Rs. 3,45,000/- per bigha to Rs. 76,550/- per bigha. The appellants/decreed holders are therefore estopped from filing the present second execution petition inasmuch as if the earlier execution petition was not got disposed by the appellants/decreed holders then either the Union of India or the DDA would have sought the filing of a curative petition or any other remedy including a review petition for setting aside the order dated 28.7.2003 dismissing the SLP in the case of appellants/decreed holders on the ground that in **Bali Ram Sharma's (supra)** case the judgment of the High Court dated 7.12.2000 in RFA No. 111/1997 had been set aside.”*

In my respectful submission, a mere careful perusal of above portion makes it crystal clear that ratio of the decision does not go to apply to the facts and circumstances of the present case inasmuch as in the present case, the first execution petition was filed on 20.04.2001 and was disposed off as satisfied on 20.03.2007, thereafter, the subsequent second execution petition was filed on 10.05.2011 and is still pending till this date, yet despite umpteen opportunities provided, the JD has failed even to make a clear submission, if, the SLP, against order, dated 07.12.2000, qua RFA No.591/1988 has been filed, and if, at all, despite the fact that the letter, dated 15.02.2012, from the LAC, distinctly, cites that the process of filing of SLP in the Hon'ble Supreme Court against the enhancement of Hon'ble High Court of Delhi is now under process. Further, the decision is also to be distinguished for the reasons that order dated 13-5-2011, in SLP(C) No. 8456/2011 has affirmed that “.....The High Court, after due consideration of the material placed before it and the judgment

of a co-ordinate Bench in “Anil Kumar Sharma & others v. Union of India” [(2000) 6, DLT, 825], fixed market value, of the acquired land at Rs. 345/- per sq. yds.....”

Hence, it is clearly, noticeable and obvious that the above decision refers to the subject matter of the RFA No. 591/1988 also, pertaining to the present case, decided also, on the basis of Anil Kumar Sharma's case by the Hon'ble High Court, thus, making the decision relied on, clearly inapplicable to the facts and circumstances of the present case, therefore, it being of no avail to the Union of India and accordingly, the decision relied on, by the J.D., is not helpful to it, in this regard.

13. The next count of objection is on the basis of application of Principles of Res-judicata, at the least, Ld. Counsel, Sh. Mridul Jain, has forcefully, argued, that though, the first execution petition No., i.e., 669/2006 was filed for execution of the judgment and decree, dated 07.12.2000, passed by the Hon'ble High Court of Delhi, in RFA No.591/1988 and the same “*petition was disposed off, as satisfied*”, vide order, dated 20.03.2007, of this Court and even earlier on 17.03.2007, it was made clear to the DHs that the compensation was to be paid @ Rs.80,377.50p per bigha, which is the market value and as has been affixed by the Hon'ble Supreme Court and thereafter, payment was, accordingly ordered to be released on bringing the LR's of Sh. Radhey, (deceased DH), on record, on 17.03.2007 and when these all LR's / DHs had accepted the payment voluntarily, and of their free accord, then, the

execution petition was rightly disposed off, as satisfied and therefore, even the payments made, in the present execution, to the DHs, in pursuance of the execution of warrant of attachment, issued by this Court, vide order, dated 01.11.2013, were made illegally, inasmuch as, the second execution, itself, was not lying and therefore, not maintainable and as such, the amount of payment, released to the DHs, vide order, dated 13.05.2014, is recoverable from them by whatever mode, the Court deems fit and appropriate and even, he has, already, moved an application under Section 151, CPC, for recovery of the amount paid to the DHs, in excess to their entitlement on 20.02.2016, thereby, praying for issuance of direction to the DHs to deposit the amount received or to provide security for recovery of the amount, received by them pursuant to order, dated 13.05.2014, to which DHs have filed their reply, denying therein any excess payment either made to them or recoverable from them. Sh. Shashindra Tripathi, Ld. Earlier Counsel, has drawn my attention to the letter, dated 15.02.2012, written by the LAC, East, to The Chief Executive Officer, Delhi Jal Board, vide which, demand of Rs.3,75,45,150.28p was raised with Board to say and contend that when the LAC himself, as Government, is admitting the decretal dues, outstanding @ Rs.3,45,000/- per bigha, in the ENM/STATEMENT 'B', attached therewith, then, the Principles of Constructive Res-judicata go to apply against UOI itself. His further submission was that when this Court had decided to issue warrant of attachment, vide its order, dated

01.11.2013, thereby ordering the recovery of decretal dues, @ Rs.3,45,000/- per bigha, by way of attaching the same from account No.37089 of LAC, East, as per ENM/STATEMENT 'B', filed by the JD, on 16.02.2012, even that goes to constitute and operate as Constructive Res-judicata against the UOI / LAC, inasmuch as, the Court thereby found the decree, dated 07.12.2000, passed by the Hon'ble High Court, executable and therefore, the decree, dated 07.12.2000, passed in RFA No.591/1988 had attained finality and therefore, is subsisting, thereby obliging this Court to execute the same and the present objections should be discarded summarily, as barred by the operation of the Principles of Constructive Res-judicata. Sh. Gaurav Puri, Id. Counsel for DHs, also has contended that, the execution subsists for the reason that even though, the payment @ Rs.80,377.50p per bigha, was made to the DHs on 20.03.2017 but, interest on the balance payment amount @ Rs.50,377.50p was calculated only upto 10.11.2002, (it is to be noted that in the copy of the ENM/calculation submitted, while remitting the first tranche of the payment to this Court, interest upto 04.11.2002 only has been calculated and not till 10.11.2002), and the second tranche of remaining payment at this rate was deposited with this Court only on 29.12.2006, therefore, interest @ 15% on this balance amount was still not paid w.e.f. 12.11.2002 and till the date of deposit of the payment, i.e., 24.12.2016. Further, the payment of interest in terms of decision of Hon'ble Supreme Court, in Sunder v. Union

of India, 2001(60) DRJ 627(SC), on the amount of Solatium was also payable and therefore, even the decree remained unsatisfied, on these accounts also, in case this Court finds that the second execution was not lying and not maintainable, making the DHs disentitled for compensation @ Rs.3,45,000/- per bigha. Sh. Mridul Jain, Id. Counsel for Union of India, has stated that UOI has no qualm regarding dispayment of interest on both the counts but, only for the compensation @ Rs.80,377.50p per bigha and not Rs.3,45,000/- per bigha, and as such, he agrees that deficient interest, if any, shall be paid by the UOI, in terms of the decision of Hon'ble Supreme Court in *Sunder's case* and further and further on the remaining balance payment amount of Rs.50,377.50p, however, his submission remains, that in any case, the second execution is still not maintainable, as it was not lying and for this Sh. Jain while, rightly, negating the submission made by Sh. Puri, in his written submissions, has, shown that the earlier execution petition No.669/06 was for execution of the order, dated 07.12.2000 and not the order of the Ld. Reference Court, as borne out by the Column No.3 of the execution petition itself and as such, his contention is that the order, dated 20.03.2007, of the Ld. Executing Court does constitute at least Construtive Res-Judicata against the D.H.s, if not the Res-Judicata itself, fully., there are interesting points / aspects of the matters relating to the pleas of Res-judicata / Constructive Res-judiciata, which shall be dealt by me, while considering the legal position, in this

regard, in the next paragraph of my this order and onward.

14. I have considered the deft of the contention and in this light that if, viewed with the same logic, it is to be noted that the Principles of Res-judicata/Constructive Res-judicata apply even to the execution proceedings and as such under the facts and circumstances of the case, they might go to constitute Res-judicata/Constructive Res-judicata against even Union of India/JD, inasmuch as, the Ld. Predecessor of this Court had already ordered for issuance of attachment warrant to secure the payment of decretal amount from the account of LAC(East), vide order dated 01.11.2013, in terms of ENM/STATEMENT 'B', enclosed with the copy of the LAC's Letter, dated 15.02.2012, and an amount of Rs.75,45,150.28 was recovered through the cheque, which, later on was ordered and sent for deposit in treasury through the District Nazir, Tis Hazari Courts, vide order dated 04.01.2014, while posting the matter for further consideration on the report of the District Nazir for disbursal of payment to the DHs. Even they constitute Res-judicata/Constructive Res-judicata, against the Union of India, when it writes Letter dated 15.02.2012, alongwith ENM / STATEMENT 'B', addressed to the CEO, DJB, New Delhi, raising the demand and requesting for releasing of enhanced compensation on or before next date of hearing, i.e., 16.02.2012, also stating therein that the process of filing SLP in the Hon'ble Supreme Court against the enhancement of Hon'ble High Court of Delhi is now under process and further praying to this Court

to take necessary action against the beneficiary department, Delhi Jal Board, as the amount of enhanced compensation is to be received from DJB, GNCT of Delhi, and when the LAC himself, as Government, is admitting the decretal dues, outstanding @ Rs.3,45,000/- per bigha, in the ENM/STATEMENT 'B', attached therewith, then, the Principles of Res-judicata/Constructive Res-judicata go to apply against UOI itself. Further, when this Court had decided to issue warrant of attachment, vide its order, dated 01.11.2013, thereby ordering the recovery of decretal dues, @ Rs.3,45,000/- per bigha, by way of attaching the same from account of LAC, East, as per ENM / STATEMENT 'B', filed on 16.02.2012, even that goes to operate as Res-judicata/Constructive Res-judicata against the UOI / LAC, inasmuch as, the Court, thereby found the decree, dated 07.12.2000, passed by the Hon'ble High Court, executable, therefore, the decree, dated 07.12.2000, passed in RFA No.591/1988 had attained finality and therefore, subsisting, thereby obliging this Court to execute the same and the present objections filed only on 07.01.2015 after passing of the order, dated 07.12.2000 by the Hon'ble High Court. However, Sh. Jain insists that in any case, the second execution is still not maintainable, as it was not lying, therefore, additional payment made to the DHs, is recoverable in terms of his application still pending, viewed in this context and also the fact that the DHs, while receiving payment in the earlier execution, vide Order, dated 24.04.2006, making no demur and a further

cumulative view of the above submissions and emerging factual scenario in this regard, there are interesting points / aspects of the matters relating to the pleas of Res-judicata / Constructive Res-judicata, which is now being adjudicated in the coming paragraphs of my this order.

15. It is to be noted that the cardinal Principles of Res-judicata have Salutory effects, when applicable to the facts and circumstances of a case in terms of Section 11, and more particularly Explanation-VII, (In case of execution proceedings) of the CPC and only when the other conditions delineated in the Section are met. Sh. Mridul Jain, Id. Counsel for the UOI has contended that the Principles of Res-judicata are applicable even in execution proceedings and for that he has placed reliance on a decision of Hon'ble High Court of Delhi in a case titled as **Khushi Ram v. Charanjit Kaur Sahni & Anr.**, reported as (2012) 194 DLT 239, needless to say that the Principles go to apply even in execution proceedings, whether directly or/ if constructively and in terms of Explanation-IV, V, VI & VIII to the Section 11 and reliance can be placed on i) **Bageesh Dutt Mishra v. Saroj Devi**, reported as MANU/DE/3675/2017, ii) **Chanceteam Investments Ltd. v. R.D.Ramanath Company and Ors.**, reported as MANU/DE/0185/2004; The latter judgment would make it clear that the Principles are applicable even in case of a foreign judgment and decree, from the reciprocating countries, however, the decree in such a case need to be based on the merits of the case and not otherwise (**M/s.**

International Woolen Mills v. M/s. Standard Wool (U.K.) Ltd., reported as MANU/SC/0304/2001). Thus, it is settled that the Principles of Res-judicata/Constructive Res-judicata are applicable to the execution proceedings, also if the other conditions of Section 11, of the CPC, as required are satisfied and in this scenario, however, the respective pleas, raised by the Ld. Counsels for the parties and emerging from the record in respect of issuance of warrant of attachment as well as revised ENMs, i.e., STATEMENT 'B", as above, as delineated in foregoing paras, need not be dealt with, by me, for the simple reasons that the objections by the UOI were filed for the first time, but only on 07.01.2015, raising legal objections, on the basis of inherent lack of jurisdiction with the Court, on account of application of pre-amended Section 25(1) of LA Act, but much later to the passing of the order, dated 07.12.2000 by the Hon'ble High Court in RFA No.591/1988 and when, the order, dated 07.12.2000, of the Hon'ble High Court, in RFA No.591/1988, obtained finality then it, operates as res-judicata, as such, the questions of application/(s) of the Principles of Constructive Res-judicata, raised by the Ld. Counsel for the UOI/DHs on the basis of position, emerging from records did not arise till that day, i.e., 07.12.2000 at all. Thereafter, it has been contended by Sh. Jain, that the order, dated 20.03.2007 passed by the Ld. Executing Court, disposing off the execution petition, as satisfied, without any demur on the part of the D.H.s, despite there already being an order, dated 17.03.2007, by that

Court that the compensation shall be paid only @ Rs.80,337.50 per bigha and the acceptance of the amount, by the decree holders shall constitute at least limited Res-Judicata / Constructive Res-Judicata, if not the Res-Judicata, directly, against the DHs, in the present case, because both the orders are judicial pronouncements, made by the Competent Court of jurisdiction and Principles of Res-Judicata are applicable even in execution proceedings, in terms of Explanation-VII, to the Section 11 of CPC, on the other hand, it has forcefully, been contended that the case of payment of compensation against land acquisition is not similar to that of payment in money decree and in case of land acquisition, the Collector is obliged to tender payment of the compensation awarded by him to the interested persons, entitled thereto, according to the award and he is also accordingly, obliged to deposit the same in the Court, the respective compensation/(s) time to time, according to his award, also the award, if any of the Ld. Reference Court and further enhancement/(s), if any, made by the Superior Courts. Further, the execution petition No.669 of 2006, was not withdrawn by the DHs, themselves and unless the same had had been withdrawn by them under the statement/(s), made by them under their signature/(s), for affirming withdrawal, even the Counsel/Advocate representing them cannot withdraw the same, therefore, the execution subsists. On a careful consideration of the relevant case laws, it appears that the Principles of Res-Judicata/Constructive Res-Judicata are applicable even to

Execution Proceedings in terms of Explanation-VII, to the Section 11 of CPC, provided the other eligibility conditions, as delineated in Explanations-III, IV & VII, attached to the Section 11 CPC are met. It appears that the DHs, while receiving payment in the earlier execution, vide Order, dated 20.03.2007, had submitted their affidavits alongwith the receipts for receiving the payment in identical terms and the para Nos.2,3&4 of the affidavits of DHs, i.e., 1) Sh. Rafal Singh, 2) Sh. Rampal, 3) Sh. Ghanshyam, 4) Sh. Shyam, all dated 03.03.2007, which interestingly, reads as under:-

“2. That the Hon'ble High Court of Delhi, vide judgment and decree, dated 07.12.2000 has been pleased to enhance the amount of compensation in the present matter pertaining to Khasra Nos.345/2 (2-11), 376 (12-18), 396 (0-15), 397 (4-4), 398 (3-9), 399 min (14-0), 400 (1-4), total area 39 bighas and 1 biswa, situated in the Revenue Estate of Village Kondli, Delhi.”

“3. That there is no stay order against the payment of present compensation either from this Hon'ble Court or Hon'ble High Court, or from the Supreme Court of India, against the deponent from receiving the compensation in this matter falling into his share.”

“4. That there is no dispute regarding the payment of compensation ordered to be paid to the deponent as the same is free from all sorts of encumbrances.”; it appears that the deposition made in the above affidavits was not noticed at the time of releasing payment to the DHs @ Rs.80,377.50p on 20.03.2007 and after taking a cumulative view of the above submissions and emerging factual scenario and it is also not disputed that the present DHs, were not a party before the Hon'ble Supreme Court in the case of Delhi Development Authority v. Bali Ram Sharma, nor

there was any SLP, directed against the judgment and decree, dated 07.12.2000, in RFA No.591/1988, in that case, even the Rule of Law, laid down in above case and the decision itself was limited qua to the bunch of the SLPs, dealt therewith and that too, on case to case basis. It has also been contended on behalf of the decree holders that an impression was created, before the then Ld. Executing Court that the amount of compensation @ Rs.76,550/- per bigha alongwith escalation @ 5% to 10% or de-escalation in similar terms was of universal application as regards the awards made in respect of large tracts of land, situating in the same village and close vicinity, thereto. It further, appears that the affidavits filed before that Courts of all the decree holders / LRs namely, Sh. Rafal Singh, Sh. Ram Pal, Sh. Ghanshyam and Sh. Shyam, all dated profusely deposed in paragraph No.2 “That the Hon'ble High Court of Delhi vide judgment and decree, dated 07.12.2000 has been pleased to enhance the amount of compensation....” and in paragraph No.3 “.....there is no stay order against the payment of present compensation...”, further, in paragraph No.4 “That there is no dispute regarding the payment of compensation ordered to be paid as the same is free from all sorts of encumbrances” and the execution petition No.669/2006, itself, was for execution of the order, dated 07.12.2000, passed by Hon'ble High Court in RFA No.591/88, as shown and borne out by Column No.3 of the execution petition. It further appears that on 17.03.2007 the presence of DH has been marked with Counsel without naming them and on that day, statement of other LRs namely, Smt. Veero

Devi, also Sh. Ravinder, Smt. Sunita, Smt. Kavita and Kumari Savita was recorded for relinquishing their share in the compensation in favour of their elder brother Sh. Rafal Singh without any pressure or inducement alongwith the statement of the DH Rafal Singh himself, besides proving copy of death certificate of deceased Sh. Radhey, as Ex.C1 and thereafter, the Ld. Court passed the following order on 17.03.2007, reading as under :-

“.....In view of the statement of LR's of late Sh. Radhey, the payment be released to LR's through Rafal Singh.

In this case some clarifications were sought with regard to payment from LAC. The Nazir has submitted his report in this case. LAC had sent the payment earlier also. However, that payment was @ Rs.30,000/- per bigha. Later on, LAC had sent the balance payment. The DH were to be paid compensation @ Rs.80,377.50/- which is the market value which has been fixed by the Hon'ble Supreme Court. The balance payment has therefore been sent @ Rs.50,377.50/-. The report of Nazir clarifies the same.

Since the payment of the DH except that of late Sh. Radhey had already been released and the LR's of late Sh. Radhey were brought on record and the matter was put up for release of payment and issuance of vouchers for 20.03.2007”; And thereafter, the order, dated 20.03.2007 was passed, reading as under :-

“Ex.No.669/06
20.03.2007

Present : Sh. Rafal Singh S/o late Sh. Radhey with
Counsel Sh. Rajeev Kumar Vats.
The payment of late Sh. Radhey was lying

unpaid. It has been released to Sh. Rafal Singh, one of the LR of late Sh. Radhey as the other Lrs of late Sh. Radhey have given the statement for releasing their compensation amount in favour of Sh. Rafal Singh. Accordingly, the payment has been released. One voucher issued. Petition stands disposed off as satisfied. File be consigned to record room.

(A.K.Kuhar)

ADJ(Exe.)/20.03.2007”

It, therefore, clearly, appears that the decree holders claimed compensation in terms of the order of the Hon'ble High Court, dated 07.12.2000, enhanced vide decision in RFA No.591/88 and as such, the same was alleged by the DHs, in terms of Explanation-III of Section 11 CPC and the same was then neither denied, or admitted expressly or impliedly by the LAC in any of the pleadings made before that Court, rather, it was on the part of the Court itself to execute the order, dated 07.12.2000, in terms of the report of the Nazir but the same was refused by the Ld. Court in terms of Explanation-V of Section 11 CPC, however, the same was based on the notion that the Bali Ram Sharma's has had universal application and therefore applicable even to present case, though, the DHs were not a party in that case and they were never heard by the Hon'ble Supreme Court for that matter. It is also noticeable that in the present execution petition further payments were released to the DHs, vide order, dated 13.05.2014, after recording the statements of Ms. Savita, Ms. Kavita, Ms. Sunita, Sh. Dharmender Kumar, Sh. Jitender Kumar, Sh. Ravinder, Sh. Shyam, Sh. Ghanshyam, Sh. Rampal and Sh. Rafal Singh and in all the statements, the last but three lines mentions about receipt of part payment only even in the present execution and the affidavits

filed alongwith their respective indemnity bonds for payment also depose to reiterate their claim for execution of the decree, dated 07.12.2000, passed by the Hon'ble High Court of Delhi in RFA No.591/88, in the matter of Sh. Radhey & Ors. v. Union of India, and as such, when it is the bounden duty of the LAC to tender due payment or otherwise deposit in the Court, then, the Court only has to facilitate such payment to the DHs for execution of the decree and when the decree holders are persistently claiming the execution of the decree, dated 07.12.2000 only, then, under the facts and circumstances of the case and disposal of petition as satisfied, in my respectful opinion would not operate either as Res-Judicata or Constructive Res-Judicata against the Dhs, who would have had naturally and gleefully, had accepted the total payment in terms of the order of the Hon'ble High Court, dated 07.12.2000, if it were made available to them by the Ld. Executing Court and if that Court was of opinion that compensation only @ Rs.80,377.50/- was payable then, it could have had asked to the DHs for making an express statement for giving up further enhanced portion and then asked them either for withdrawal or for satisfaction of the decree on the basis of 'Accord and Satisfaction' and thus, they can always ask for execution of the remaining portion of the decree subject to the law of limitation, in the matter, particularly, when the earlier execution was not withdrawn by them, though, it was disposed off as satisfied and as such, even this count of the objections to the present execution fails and is liable to be dismissed. I, hereby, therefore, dismiss, the objections,

raised by the LAC, vide its application, dated 07.01.2015, consequently, application, moved by the LAC for recovery of excess payment, if any, made to the DHs or providing security, is also hereby rejected. It appears that the payment regarding decretal dues has already been deposited in the Court by the LAC, on attachment and the same has been sent to the office of District Nazir, Tis Hazari for deposit of the same in the Treasury on 04.01.2014. Let a fresh report be called from District Nazir, Tis Hazari Courts, in respect of the decretal dues to be payable to the decree holders, after deduction of due TDS thereupon, on 23.12.2020, in the matter.

Announced in the open
Court on 05.12.2020

(Sanatan Prasad)
Additional District Judge-01
(East)/KKD/Delhi / 05.12.20