

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4373 OF 2009

Saraswati Devi (D) By LR.

..... Appellant

Vs.

Delhi Devt. Authority & Ors.  
Respondents

.....

JUDGMENT

R.M. LODHA, J.

This is an appeal by the appellant against the decision of the Division Bench of the Delhi High Court on 31.05.2007, in allowing the Letters Patent Appeal (LPA) preferred by the Delhi Development Authority (DDA) against the decision of the Single Judge dated 09.08.2002. Leave to appeal was granted by this Court on 13.07.2009.

2. The facts which form the background of the appeal can be briefly stated as follows : The controversy relates to a piece of land admeasuring 5 Bighas 19 Biswas comprised in Khasra No. 368 situate in the revenue village Masjid Moth, New Delhi. The above property was an evacuee property which was acquired by the central government under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short, '1954 Act'). On acquisition of that property under Section 12, it became part of the compensation pool under Section 14. By exercise of the power conferred under Section 20, the above property was notified to be sold by way of public auction on 21.06.1958.

3. Dev Prakash Jagwani, the appellant's husband being a displaced person participated in the public auction for the sale of above property. His bid of Rs. 24,500/- which was the highest bid was accepted.

4. On 31.10.1960, the office of the Assistant Settlement Commissioner (Rural), Ministry of Rehabilitation intimated to the appellant's husband that it has been decided to give him provisional possession of the auctioned property subject to the terms and conditions stipulated in the indemnity bond and the special affidavit already executed by him. He was also informed that the issue of the above intimation did not constitute transfer of complete title in the property until the final letter of adjustment of compensation was issued.

5. The appellant's husband is said to have died in 1970. On 16.06.1980, a letter was received from the Ministry of Rehabilitation by a friend of the appellant's late husband requiring the deposit of a sum of Rs. 14,992/- towards balance price of auction sale within fifteen days. The appellant deposited the balance price.

6. On 22.08.1980, a sale certificate as contemplated by the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (for short, '1955 Rules') was issued. On 15.07.1981 the sale certificate was registered with the Sub-Registrar.

7. Between 31.10.1960 when the appellant's husband was intimated that his bid had been approved in respect of the above property; the payment of full price by the appellant pursuant to the communication dated

16.06.1980; the issuance of sale certificate dated 22.08.1980 and its registration thereof on 15.07.1981, an important event took place. On 07.03.1962, the Delhi Administration, Delhi issued a Notification under Section 4 read with Section 17(1)(iv) of the Land Acquisition Act, 1894 (for short, 'LA Act') proposing to acquire a large tract of land admeasuring 198 Bighas and 11 Biswas which included the subject land situate at Masjid Moth for the public purpose, namely, for the plan development of Delhi. Since the urgency clause under Section 17(1)(iv) of the LA Act was invoked, the provisions of Section 5A were dispensed with. The declaration under Section 6 was made and later on award was passed on 30.06.1962.

8. It is the appellant's case that somewhere in 1981, after the sale certificate was registered, one Mr. Chhugani, a friend of the appellant's late husband, learnt about the acquisition of the subject land and he made representations to the authorities. It is further case of the appellant that a notice in Land Acquisition Case No. 72/85 was received by Mr. Chhugani for 11.08.1992 which was communicated to the appellant. The appellant initially filed a suit but later on challenged the above acquisition before the Delhi High Court by filing a writ petition on 10.08.1993.

9. The challenge to the acquisition after more than 30 years of the passing of the award was principally founded on the ground that at the relevant time in 1962, the land belonged to the central government being an evacuee land acquired under Section 12 of the 1954 Act and as such the said land could not have been acquired under the LA Act.

10. DDA was not impleaded as party respondent initially but later on it was impleaded as Respondent No. 4 in the writ petition. DDA filed its written response in opposition to the writ petition and raised the plea of delay and laches. In its reply, DDA submitted that the physical vacant possession of the land was taken on 11.07.1962 after the award was passed on 30.06.1962 and the subject land was placed at its disposal on 09.02.1981. It was also submitted by DDA that though the property was conveyed to the petitioner (appellant herein) on 22.08.1980 but she was declared purchaser of the said property with effect from 11.12.1960 and, thus, the subject land ceased to be government land with effect from 11.12.1960 and whatever rights the appellant had could be acquired under the LA Act.

11. In light of the rival position set up by the parties, the Single Judge framed two questions for consideration :

(i) Whether the land in question was an evacuee land on the date of issue of Notification under Section 4 of the LA Act on 07.03.1962?

(ii) Whether the land, if it was an evacuee property, could have been acquired under the law?

12. The Single Judge was not persuaded by the plea of delay and laches. He considered the provisions of the 1954 Act and the relevant procedure of auction sale prescribed in the 1955 Rules. He referred to a decision of this Court in *Bishan Paul v. Mothu Ram*[1], few decisions of his own High Court including *Nanak Chand Sharma v. Union of India* and others[2] and *Sham Sunder Khanna v. Union of India*[3] and a decision of the Punjab High Court. On consideration of the above provisions and the precedents, the Single Judge allowed the writ petition; quashed the Notification dated 07.03.1962 issued under Section 4 of the LA Act and the subsequent proceedings in the Land Acquisition Case No. 72/85.

13. DDA challenged the decision of the Single Judge in LPA and since it suffered from the delay of 760 days, an application was made for condonation of delay.

14. The Division Bench of the Delhi High Court observed that there was delay of about 760 days in filing the LPA against the decision of the Single Judge but, at the same time, there was delay of more than 31 years on the part of the writ petitioner in challenging the acquisition proceedings and since there was delay on the part of both sides and the question related to valuable rights in the land, the delay on the part of either of the parties should not come in the way of doing justice. This is what the Division Bench observed:

"6. There is delay of about 760 days in filing of this appeal. The appellant has filed an application (CM No. 2093/2005) for condonation of the said delay. This application is supported by the affidavit of Mr. S.P. Pandey, Director, LM (HQ) DDA. The

appellant had contended in its application for condonation of delay that the delay of 760 days in filing of the appeal was neither willful nor due to negligence but was due to the time consuming and unavoidable administrative procedures which have to be gone through in cases like the present one, where the Government is the litigant and decisions have to be taken collectively. It is further contended that the appellant had to collate documents, administrative orders, judgments of the Supreme Court and various other records for preparation of the present appeal. The request made by the appellant for condonation of the delay is opposed by the counsel appearing on behalf of the respondent No. 1 on the ground that the explanation given by the appellant for delay in filing of the present appeal is unsatisfactory. We have given our anxious consideration to this aspect relating to condonation of delay. While considering the delay on the part of the appellant in filing of the present appeal, we have also taken into account the delay of more than 31 years on the part of respondent No. 1 in challenging the acquisition proceedings by way of writ petition in which the impugned order which is the subject matter or challenge in this appeal has been opposed. We are of the view that since the question in the present proceedings relates to valuable rights of the parties in the land in question, the delay on the part of either of the parties cannot be allowed to come in the way of doing justice. We are further of the view that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred. We feel that by delay, the appellant would not stand to gain anything and at best he would only be entitled to get his claim adjudicated on merits instead of it being thrown to winds on technical consideration of delay in filing of the appeal. Having regard to the circumstances of the case, we are inclined to condone the delay in filing of the present appeal. The delay is accordingly condoned and the appeal is taken up for disposal on merits."

15. On consideration of the matter on merits, the Division Bench was of the view that the decision of Single Judge was unsustainable in view of the Division Bench decision of that Court in M.S. Dewan[4]. The Division Bench also relied upon a decision of this Court in Delhi Administration and Others v. Madan Lal Nangia and Others[5]. The consideration of the matter by the Division Bench is reflected in paragraphs 10,11 and 12 of the judgment which read as under:

"10. It may be seen from the above judgment in Madan Lal Nagia's case (Supra) that the Supreme Court has categorically held that even if there is a finding that the property acquired was an evacuee property on the date of Notification under Section 4 of the Land Acquisition Act, the acquisition in respect of the said land would still be valid.

11. The acquisition of land on similar facts, as are in the present case, was upheld by a Division Bench of this Court in case titled 'M.S. Dewan v. UOI & Ors., CWP No. 1400/1986 decided on 06.02.2003. In M.S. Dewan's case (Supra) a Division Bench of this Court had upheld the acquisition of evacuee property and dismissed the writ petition of the auction purchaser. Even S.L.P. (Civil) No. 71152/2003 filed by the auction purchaser against the aforementioned decision of this Court was also dismissed by the Hon'ble Supreme Court. Hence the view taken by this Court in M.S. Dewan's case became final. Hence it would be relevant and necessary to refer to para 23 of the said judgment which is extracted here-in-below:-

"We have already held above that the title in the property passed in favour of the petitioner on 14.11.1961. Even assuming that the title had not passed to the petitioner till 22.07.1963, when sale certificate was issued, in that case also we do not find any substance in the submission made on behalf of the

petitioner that the property could not have been notified for being acquired being the property of the Government till 22.07.1963 and the Government could not have acquired its own property. The reason in our holding so is that the property on being put to auction on 28.12.1960, the petitioner was declared to be the highest bidder against his verified claims of the property left behind in Pakistan the verified claims were surrendered by him as a part of consideration for purchase of the property in question in public auction. The balance consideration was paid in cash. The entire consideration stood paid by 14.11.1961. The right of the petitioner in the property on being declared to the highest bidder was a valuable right, which the petitioner could enforce against the respondents in compelling the respondent to transfer the property in his name. Such a right could be acquired. The property on being put to auction and on the petitioner being declared to be the highest bidder and on receipt of entire sale consideration went out of compensation pool. The petitioner alone had interest in the property. This interest could definitely be acquired pursuant to the notification issued under Section 4 of the Act. Therefore, it cannot be said that the notification under section 4 of the Act was non est. It was for the petitioner to have raised a claim. Proceedings for acquisition thus cannot be challenged on the ground that such interest could not have been acquired. Therefore, no fault can be found in the notification under Section 4 of the Act."

12. The question that needs our consideration in the present appeal is squarely covered by the above judgment of this Court in M.S. Dewan's case. The facts of the present case as well as that of M.S. Dewan's case are almost same. It has been categorically held in M.S. Dewan's case that the right held by the auction purchaser can be legally acquired by way of Notification under Section 4 of the Land Acquisition Act notwithstanding the transfer of title in respect of land in question in his favour. We respectfully agree with the view already taken by this Court in the aforesaid case. Hence we have no hesitation in holding that Learned Single Judge erred in holding that the property in question was an evacuee property on the date of Notification dated 07.03.1962 and in quashing the said Notification for that reason. The view so taken by Learned Single Judge in the impugned order thus cannot be sustained in law particularly in view of the above referred judgment of the Supreme Court and of this Court."

15.1. The Division Bench, accordingly, set aside the order of the Single Judge passed on 09.08.2002 and allowed the appeal of DDA with cost throughout.

16. Before us, Mr. Ranjit Kumar, learned senior counsel for the appellant, vehemently argued that the appellant acquired the title in the land on the day the full sale consideration was paid in 1980 and prior to that date the land belonged to the central government and as such it could not have been acquired under the LA Act by the Delhi Administration. He highlighted the facts relating to auction of the subject land which was conducted on 21.06.1958; approval of the highest bid of the appellant's husband by the Settlement Commissioner on 31.10.1960, communication from the Ministry of Rehabilitation dated 16.06.1980 requiring the deposit of Rs. 14,992/- as balance sale consideration, deposit of that amount by the appellant within fifteen days thereof; issuance of sale certificate on 22.08.1980 and its registration on 15.07.1981 and submitted that until the full price was paid, the appellant (auction purchaser) acquired no right in the land of any nature and the land remained with the central government. In this regard, he relied upon decisions of the Punjab High Court in Roshan Lal Goswami v. Gobind Raj & Ors.[6] and Jaimal Singh, s/o Jawahar Singh & Anr. v. Smt. Gini Devi[7] and the decisions of this Court

in M/s. Bombay Salt & Chemical Industries v. L.J. Johnson & Ors.[8], Bishan Paul, Dr. Bhargava & Co. and another v. Shyam Sunder Seth by LRS.[9] and Hans Raj Banga v. Ram Chander Aggarwal[10].

17. Mr. Ranjit Kumar heavily relied upon the decision of this Court in Sharda Devi v. State of Bihar and another[11] in support of his argument that so long as title vests with the central government, the land cannot be acquired under the LA Act. He argued that under the LA Act, the acquisition is of land and not the 'rights in the land' which are not even absolute and which are subject to certain obligations.

18. Mr. P.P. Malhotra, learned Additional Solicitor General and Mr. Amarendra Sharan, learned senior counsel for DDA conversely not only supported the final conclusion of the Division Bench in upsetting the judgment of the Single Judge but also vehemently argued that writ petition filed by the appellant was liable to be dismissed on the grounds of delay and laches of more than 30 years and suppression of material facts inasmuch as the writ petition in the High Court was supported by an affidavit of J.K. Jagwani claiming himself to be power of attorney holder while one Devi Dayal Jagwani is a registered power of attorney holder of the appellant. It was also submitted that present appeal is a proxy appeal at the instance of J.K. Jagwani who has purchased the subject property by a registered sale deed dated 28.02.2003.

19. Mr. P.P. Malhotra, learned Additional Solicitor General further argued that on approval of the bid of the appellant's husband a binding contract came into existence between the central government and him which amounted to 'encumbrance' and, therefore, there was no impediment in acquisition of the subject land under the LA Act.

20. On behalf of the respondents, heavy reliance was placed on the decision of this Court in Madan Lal Nangia<sup>5</sup>.

21. Mr. Amarendra Sharan, learned senior counsel for the DDA also submitted that the subject land was placed at the disposal of DDA way back in 1981 and subsequently it has been allotted to All India Institute of Medical Sciences (AIIMS) which has also taken possession of the said land.

22. In rejoinder, Mr. Ranjit Kumar and Mr. Vijay Hansaria, learned senior counsel for the appellant submitted that there was nothing to show that AIIMS has been allotted the above land. In the written submissions filed by the appellant, it is stated that there is no land in Masjid Moth ever given to AIIMS. In this regard, reference has been made to the reply received pursuant to the query made by the appellant under Right to Information Act. They denied that appeal was a proxy litigation. It was submitted that J.K. Jagwani, power of attorney holder, was one of the family members residing in Delhi; the family had purchased the property from their verified claim and the sale certificate was issued in favour of Smt. Saraswati Devi who under the family settlement transferred part of land in favour of J.K. Jagwani and other family members.

23. The approach of the Division Bench of the High Court in offsetting the delay and laches of more than 30 years in challenging the acquisition proceedings with the delay of 760 days in filing the LPA is a little strange and though does not commend to us but we do not intend to disturb the finding of the Division Bench on this aspect in view of the appropriate final conclusion in the matter.

24. The principal contention on behalf of the appellant raised before us (which was also argued before the Single Judge and the Division Bench of the High Court) is that on the date of the acquisition, the subject property vested in the central government having been acquired under Section 12 of the 1954 Act; the title in that land did not transfer in favour of the appellant's husband despite public auction conducted on 21.06.1958 and the approval of the highest bid given by the appellant's husband on 31.10.1960, as the full price had only been paid in 1980 by the appellant (her husband had died in the meanwhile), and, therefore, acquisition of the subject land in 1962 under the LA Act at the instance of the Delhi Administration was bad in law. In this regard, heavy reliance has been placed on behalf of the appellant upon the decision of this Court in Sharda Devill. We shall first refer to the decision of this Court in Sharda Devill.

25. In Sharda Devill, this Court was concerned with the question whether the State could proceed to acquire land on an assumption that it belonged to a particular person, whether in such situation the award passed by the land acquisition officer could be called in question by the State seeking a reference under Section 30 of the LA Act on the premise

that the land did not belong to the person from whom it was purportedly acquired and was a land owned by the State having vested in it, consequent upon abolition of proprietary rights, much before the acquisition. This Court examined and analysed provisions of the LA Act and also considered few earlier decisions of this Court and the decisions of some high courts. Considering the question in light of the above, this Court held as under:

"27. We have entered into examining the scheme of the Act and exploring the difference between reference under Section 18 and the one under Section 30 of the Act as it was necessary for finding out answer to the core question staring before us. The power to acquire by the State the land owned by its subjects hails from the right of eminent domain vesting in the State which is essentially an attribute of sovereign power of the State. So long as the public purpose subsists, the exercise of the power by the State to acquire the land of its subjects without regard to the wishes or willingness of the owner or person interested in the land cannot be questioned. (See *Scindia Employees' Union v. State of Maharashtra* [(1996) 10 SCC 150], SCC para 4 and *State of Maharashtra v. Sant Joginder Singh Kishan Singh* [1995 Supp (2) SCC 475], SCC para 7.) The State does not acquire its own land for it is futile to exercise the power of eminent domain for acquiring rights in the land, which already vests in the State. It would be absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. In other words, the land owned by the State on which there are no private rights or encumbrances is beyond the purview of the provisions of the Land Acquisition Act. The position of law is so clear as does not stand in need of any authority for support. Still a few decided cases in point may be referred since available.

28. In *Collector of Bombay v. Nusserwanji Rattanji Mistri* [AIR 1955 SC 298] this Court held that when the Government acquires lands under the provisions of the Land Acquisition Act, it must be for a public purpose, and with a view to put them to that purpose, the Government acquires the sum total of all private interests subsisting in them. If the Government has itself an interest in the land, it has only to acquire the other interests outstanding thereof so that it might be in a position to pass it on absolutely for public user. An interesting argument was advanced before the Supreme Court. It was submitted that the right of the Government to levy assessment on the lands is an "encumbrance" and that encumbrance is capable of acquisition. The Court held that the word "encumbrance" as occurring in Section 16 can only mean interests in respect of which a compensation was made under Section 11 or could have been claimed. It cannot include the right of the Government to levy assessment on the lands. The Act does not contemplate the interest of the Government in any land being valued or compensation being awarded therefor.

29. In *Secy. of State v. Sri Narain Khanna* [AIR 1942 PC 35: 44 Bom LR 788] it was held that where the Government acquires any property consisting of land and buildings and where the land was the subject-matter of the government grant, subject to the power of resumption by the Government at any time on giving one month's notice, then the compensation was payable only in respect of such buildings as may have been authorized to be erected and not in respect of the land.

30. In the matter of the Land Acquisition Act: *Govt. of Bombay v. Esufali Salebhai* [ILR (1910) 34 Bom 618 : 12 Bom LR 34] ILR (at p. 636) Batchelor, J. held that the Government are not debarred from acquiring and paying for the only outstanding interests merely because the Act, which primarily contemplates all interests as held outside the Government, directs that the entire compensation based upon the market value of the whole land must be distributed among the claimants. The Government was held liable to acquire and pay only for the superstructure as it was already the owner of the land.

31. In *Dy. Collector, Calicut Division v. Aiyavu Pillay* [9 IC

341: (1911) 2 MWN 367 : 9 MLT 272] Wallis, J. observed that the Act does not contemplate or provide for the acquisition of any interest which already belongs to the Government in land which is being acquired under the Act but only for the acquisition of such interests in the land as do not already belong to the Government.

32. In Collector of Bombay v. Nusserwanji Rattanji Mistri [AIR 1955 SC 298] the decisions in Esufali Salebhai case [ILR (1910) 34 Bom 618 : 12 Bom LR 34] and Aiyavu Pillay case [9 IC 341: (1911) 2 MWN 367 : 9 MLT 272] were cited with approval. Expressing its entire agreement with the said views, the Court held that when the Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition because there can be no question of the Government acquiring what is its own. An investigation into the nature and value of that interest is necessary for determining the compensation payable for the interest outstanding in the claimants but that would not make it the subject of acquisition. In the land acquisition proceedings there is no value of the right of the Government to levy assessment on the lands and there is no award of compensation therefor. It was, therefore, held by a Division Bench of Judicial Commissioners in Mohd. Wajeeh Mirza v. Secy. of State for India in Council [AIR 1921 Oudh 31: 24 Oudh Cas 197] that the question of title arising between the Government and another claimant cannot be settled by the Judge in a reference under Section 18 of the Act. When the Government itself claims to be the owner of the land, there can be no question of its acquisition and the provisions of the Land Acquisition Act cannot be applicable. In our opinion the statement of law so made by the learned Judicial Commissioners is correct."

26. This Court answered the question under consideration in the negative and held that the acquisition of land wherein the ownership or the entirety of rights already vested in the State on which there were no private rights or encumbrances, such land was beyond the purview of LA Act. We agree with the position of law highlighted in Sharda Devill but the question is of its applicability on the factual situation of the present case. Before we consider this aspect, we may also deal with the statutory provisions and the decisions of this Court and the two decisions of the Punjab High Court upon which strong reliance has been placed on behalf of the appellant in support of the argument that acceptance of the highest bid in public auction under Rule 90 of the 1955 Rules for sale of the property forming part of the compensation pool does not create any title or right in favour of the auction-purchaser unless the full auction price is paid/deposited.

27. By virtue of Section 14 of the 1954 Act, an evacuee property acquired under Section 12 becomes part of the compensation pool. The compensation pool vests in the central government free from all encumbrances. Section 20 empowers the managing officer or managing corporation to transfer any property out of the compensation pool subject to the 1955 Rules. Chapter XIV of the 1955 Rules provides for the procedure for sale of property in the compensation pool. Rule 87 provides that the property forming part of compensation pool may be sold by public auction or by inviting tenders. Rule 90 provides for the procedure for sale of property by public auction. The said rule, to the extent it is relevant, reads as under:

"90. Procedure for sale of property by public auction-(1) Where any property is to be sold by public auction-

- (a) The property shall be sold through firms of repute who have been approved as auctioneer by the Chief Settlement Commissioner or through the officers appointed by the Central Government in this behalf;
- (b) the terms and conditions on which auctioneers may be



Provided that the Settlement Commissioner or any officer appointed by him in this behalf may, for reasons to be recorded in writing, extend the aforesaid period of seven days by such further period not exceeding fifteen days as the Settlement Commissioner or such other officer may deem fit:

Provided further that the period extended under the preceding proviso may further be extended (without any limit of time) by the Chief Settlement Commissioner.

(13) If the Regional Settlement Commissioner, on scrutiny of the compensation application of the auction purchaser finds that further sum is due to make up the purchase price, he shall send an intimation to that effect to the auction purchaser calling upon him to deposit the balance in cash within fifteen days of the receipt of such intimation.

(14) If the auction purchaser does not deposit the balance of the purchase money within the period specified in sub-rule (11) or does not furnish particulars of his compensation application as specified in sub-rule (12), or if that net compensation admissible to the auction purchaser is found to be less than the balance of the purchase money and the auction purchaser does not make up the deficiency as provided in sub-rule (13), the initial deposit made by the auction purchaser under sub-rule (8) shall be liable to forfeiture and he shall not have any claim to the property.

(15) When the purchase price has been realised in full from the auction purchaser, the Managing Officer shall issue to him a sale certificate in the form specified in Appendix XXII or XXIII, as the case may be. A certified copy of the sale certificate shall be sent by him to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the property to which the certificate relates is situated. If the auction purchaser has associated with himself any other displaced person having a verified claim whose net compensation is to be adjusted in whole or in part against the purchase price, the sale certificate shall be made out jointly in the name of all such persons, and shall specify the extent of interest of each in the property.

Provided that if every such displaced person who has associated himself with the auction-purchaser sends an intimation in writing to the Regional Settlement Commissioner that the sale certificate may be made out in the name of the auction-purchaser, the sale certificate may be made out in the name of the auction-purchaser."

28. In Bombay Salt & Chemical Industries<sup>8</sup>, this Court with reference to the public auction of certain salt pans which were evacuee property and formed part of the compensation pool constituted under the 1954 Act held in para 10 of the Report as under :

"10. It is clear from the rules and the conditions of sale set out above that the declaration that a person was the highest bidder at the auction does not amount to a complete sale and transfer of the property to him. The fact that the bid has to be approved by the Settlement Commissioner shows that till such approval which the Commissioner is not bound to give, the auction-purchaser has no right at all. It would further appear that even the approval of the bid by the Settlement Commissioner does not amount to a transfer of property for the purchaser has yet to pay the balance of the purchase money and the rules provide that if he fails to do that he shall not have any claim

to the property. The correct position is that on the approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auction-purchaser comes into existence. Then the provision as to the sale certificate would indicate that only upon the issue of it a transfer of the property takes place. Condition of Sale No. 7 in this case, furthermore, expressly stipulated that upon the payment of the purchase price in full the ownership would be transferred and a sale certificate issued. It is for the appellants to show that the property had been transferred. They have not stated that the sale certificate was issued, nor that the balance of the purchase money had been paid. In those circumstances, it must be held that there has as yet been no transfer of the salt pans to Respondents 4 and 5. The appellants cannot therefore claim the benefit of Section 29 and ask that they should not be evicted. Mr. Purshottam Trikamdass contended that the sale certificate will in any event be granted and that once it is granted, as the form of this certificate shows, the transfer will relate back to the date of the auction. It is enough to say in answer to this contention that assuming it to be right, a point which is by no means obvious and which we do not decide, till it is granted no transfer with effect from any date whatsoever takes place and none has yet been granted."

29. In *Bishan Paull*, a two-Judge Bench of this Court observed that in *Bombay Salt & Chemical Industries*<sup>8</sup> this Court did not directly decide the question when title would pass to an auction-purchaser. It was held that title would pass when the full price was realized. This Court observed having regard to the time lag between acceptance of the highest bid, payment of full price and the issuance of certificate, that title must be deemed to have been passed when the sale became absolute and the sale certificate must relate back to that date, i.e., when the sale became absolute.

30. In *Roshan Lal Goswami*<sup>6</sup>, a Division Bench of the Punjab High Court, on examination of the provisions of the 1954 Act and Rule 90 of the 1955 Rules, held that till a sale certificate was issued to the highest bidder and till the balance of the purchase money had been paid, rights of ownership would not vest in the auction-purchaser and the proprietary rights, therefore, would not stand transferred by the mere fact that the highest bid of the auction-purchaser has been accepted. The Division Bench of the Punjab High Court noticed the lacuna in the 1954 Act about transitional stage after the acceptance of the highest bid at the auction and till the sale certificate was granted. Pertinently, with regard to the provisional possession given to the auction-purchaser on acceptance of the highest bid, the Division Bench of the Punjab High Court observed as under:

"8. After provisional possession has been given, the auction-purchaser, even though he does not possess proprietary rights, has possessory rights. He has the right of possession which can exist independently of ownership. Possession and ownership may co-exist but in a number of cases a person may be the owner of a thing and not possess it; and conversely, a person may be the possessor without being the owner. A person, who is a possessor but not the legal owner, is entitled to certain rights by virtue of his possession alone. . . . ."

31. In *Jaimal Singh*<sup>7</sup>, the Punjab High Court, after noticing Rule 90 of the 1955 Rules, in para 16 of the Report, inter alia, held as under:

".....In my view, title passes when the sale is confirmed, because it is that date on which the auction-purchaser is recognised officially as the owner and is entitled to obtain possession of the property. The issue of the sale certificate is invariably delayed because certain routine formalities have to be complied with and it is in very rare cases that an office can be so prompt as to issue the sale certificate on the very day the sale is confirmed. But when a sale certificate is issued, it dates back to the date when the sale was confirmed."

32. The legal position with regard to transfer of title in respect

of the property forming part of the compensation pool put to public auction under Rule 90 of the 1955 Rules may be summarized thus : on approval of the highest bid by the Competent Authority, a binding contract for the sale of the property to the auction-purchaser comes into existence. Once the payment of the full purchase price is made, title in the property would pass to an auction-purchaser. In other words, on the payment of the full purchase price, the ownership in the property sold in public auction would stand transferred but the transfer formally becomes complete on issuance of the certificate of sale. If in the sale certificate, any particular date is mentioned as provided in the proforma appended to Rule 90, such date mentioned in the sale certificate may be presumed to be the date on which the purchase has become effective but crucial date for transfer of ownership in the property in favour of auction-purchaser is the date when full purchase price has been paid by the auction-purchaser.

33. The above being the legal position, let us recapitulate the facts and the effect of provisional possession given to the appellant's husband. The auction of the subject land was conducted on 21.06.1958. The highest bid submitted by the appellant's husband was approved by the Settlement Commissioner and a communication to that effect was sent on 31.10.1960 intimating to him that it has been decided to give him provisional possession of the auctioned property. It is an admitted case that provisional possession was in fact given to the appellant's husband. On 16.06.1980, the concerned authority asked the auction-purchaser to deposit Rs. 14,992/- as balance sale consideration which was done by the appellant within the prescribed time (appellant's husband had died in the meanwhile) and sale certificate was issued in favour of the appellant on 22.08.1980. The said sale certificate was registered on 15.07.1981. It may be noticed here that the sale certificate mentions that the appellant has been declared purchaser of the subject property with effect from 11.12.1958 but as a matter of law as indicated above, the ownership could have transferred in favour of the appellant only in 1980 when she paid full purchase price. In fact no ownership was transferred in favour of the appellant even on that date. We shall indicate the reason therefor a little later.

34. What is the effect of provisional possession which was given to the appellant's husband in 1960 on approval of his highest bid? Does it amount to creation of an encumbrance in the property? If the provisional possession given to the appellant's husband amounted to creation of an encumbrance, whether the said property could have been acquired under the LA Act although the ownership vested in the central government? The fate of the appeal significantly will depend upon answer to these questions. 35.

Concise Oxford English Dictionary [Tenth Edition, Revised] defines "encumbrance" - 1. a burden or impediment. 2. Law a mortgage or other charge on property or assets.

36. Webster Comprehensive Dictionary [International Edition; Volume I] defines "encumbrance" as follows:

"1. That which encumbers. 2. Law Any lien or liability attached to real property. 3. One's wife, child or dependent. Also spelled incumbrance. See synonyms under IMPEDIMENT, LOAD [ <OF encumbrance <encombrer. See ENCUMBER.]"

37. In P. Ramanatha Aiyar's The Law Lexicon [Second Edition Reprint 2000] with reference to a decision of the Patna High Court in Mahadeo Prasad Sahu v. Gajadhar Prasad Sahu[12], the term "encumbrance" is explained as follows :

"Encumbrance. Burden or property; impediment; mortgage or other claim on property. Grant of lands rent free or the grant of the landlords zarait land to a tenant for the purposes of cultivation does amount to an encumbrance of the estate. Apart from mere dealings such as mortgages which create a charge upon the land, there are other dealings which amount to an encumbrance. Anything which interferes with the unrestricted rights of the proprietors as they then existed would be an encumbrance upon the land, even the granting of a lease of zarait lands, that is to say the lands which the landlord is entitled to hold in direct possession and to cultivate for his own purposes. A lease of such lands granted to an occupier in circumstances which would give him a right of occupancy over the land, would amount to an encumbrance."

38. In Collector of Bombay v. Nusserwanji Rattanji Mistri and Others[13], the term "encumbrance" as occurring in Section 16 of the LA Act has been explained by this Court to mean interests in respect of which a compensation was made under Section 11 or could have been claimed thereunder.

39. In M. Ratanchand Chordia & Ors. v. Kasim Khaleeli[14], a Division Bench of the Madras High Court had an occasion to consider the meaning of the word "encumbrances" with reference to the 1954 Act and the LA Act in the context of the easementary right of way. The Division Bench considered the word "encumbrances" thus :

"18. The word "Encumbrances" in regard to a person or an estate denotes a burden which ordinarily consists of debts, obligations and responsibilities. In the sphere of law it connotes a liability attached to the property arising out of a claim or lien subsisting in favour of a person who is not the owner of the property. Thus a mortgage, a charge and vendor's lien are all instances of encumbrances. The essence of an encumbrance is that it must bear upon the property directly and in-directly and not remotely or circuitously. It is a right in realiena circumscribing and subtracting from the general proprietary right of another person. An encumbered right, that is a right subject to a limitation, is called servient while the encumbrance itself is designated as dominant. . . . ."

40. The word "encumbrance", according to its ordinary significance, means any right existing in another to use the land or whereby the use by the owner is restricted. The word "encumbrance" imports within itself every right or interest in the land, which may subsist in a person other than the owner; it is anything which places the burden of a legal liability upon property. The word "encumbrance" in law has to be understood in the context of the provision under consideration but ordinarily its ambit and scope is wide. Seen thus, it is difficult to see why a binding contract entered into between an auction-purchaser and the government on approval of the highest bid relating to sale of property, which is part of compensation pool under Section 14 of the 1954 Act followed by provisional possession to the auction-purchaser, should not come within the purview of the word "encumbrance".

41. It is well known in law that a person in possession of the property - though not owner - is entitled to certain rights by virtue of his possession alone. We are in agreement with the view of the Punjab High Court in Roshan Lal Goswami<sup>6</sup> that an auction-purchaser on provisional possession being given to him possesses possessory rights, though he does not have proprietary rights in the auctioned property. Thus, there remains no doubt that in October, 1960 or near about encumbrance in the subject property came to be created.

42. The next question is whether on creation of an encumbrance, the subject property could have been acquired under the LA Act although the ownership in the land vested in the central government. Ordinarily, when the government possesses an interest in land, which is the subject of acquisition under the LA Act, that interest is outside such acquisition because there can be no question of the government acquiring what is its own. This is what this Court said in Nusserwanji Rattanji Mistril<sup>3</sup> but this rule is not without an exception. There is no impediment in acquisition of land owned by the central government by invoking the provisions of the LA Act where such land is encumbered or where in respect of the land owned by the government some private interest has been created. As a matter of fact, Sharda Devill does not hold to the contrary. It is so because what Sharda Devill holds is this : the acquisition of land wherein the ownership or the entirety of rights already vested in the State on which there are no private rights or encumbrance such land is beyond the purview of the LA Act. In other words, if the government has complete ownership or the entirety of rights in the property with it, such land cannot be acquired by the government by invoking its power of acquisition under the LA Act but if some private rights have been created in such property or the property has encumbrance(s), the acquisition of such land is not beyond the pale of the LA Act.

43. Madan Lal Nangia<sup>5</sup> has been relied upon by the Division Bench in the impugned order in upsetting the decision of the Single Judge. Mr.

Ranjit Kumar, learned senior counsel for the appellant sought to distinguish this judgment. He submitted that Madan Lal Nangia<sup>5</sup> was a case where this Court was concerned with the properties which vested in the custodian and having regard to this aspect, this Court said that merely because the properties vest in the custodian as an evacuee property it does not mean that the same cannot be acquired for some other purpose.

44. It is true that facts in Madan Lal Nangia<sup>5</sup> were little different but, in our view, the legal position highlighted therein does not become inapplicable to the present case on that ground. In paragraphs 16, 17 and 18 of the Report (Pgs. 334-335), this Court observed as follows:

"16.....A property is a composite property because a private party has an interest in that property. The scheme of separation, to be framed under Section 10 of the Evacuee Interest (Separation) Act, is for the purpose of separating the interest of the evacuee from that of the private party. Therefore, even if the evacuee's interest was acquired under Section 12, the interest of the private person could have been acquired under the Land Acquisition Act. Further, if the land stood acquired by the notification dated 7-7-1955 then the question would arise as to how the respondents acquired title to these lands. If they purchased after the date of notification dated 7-7-1955, they would get no title. They then would not be able to maintain the writ petition. Dr Dhavan submitted that the appellants had admitted the title of the respondents and thus this question would not arise. We are unable to accept the submission. It is only a person who has an interest in the land who can challenge acquisition. When a challenge is made to an acquisition at a belated stage, then even if the court is inclined to allow such a belated challenge, it must first satisfy itself that the person challenging acquisition has title to the land. Very significantly, in their writ petition the respondents do not state when they acquired title.

17.....Undoubtedly, the evacuee properties vested in the Custodian for the purposes of distribution as per the provisions of the various Acts. However, it is to be noted that under the various Acts in lieu of properties, compensation in terms of money can also be paid. Thus, merely because the properties vest in the Custodian as evacuee properties does not mean that the same cannot be acquired for some other public purpose.....

18.....It would be open to the Government to acquire evacuee property and give to the Custodian compensation for such acquisition. Section 4 notification dated 23-1-1965 not having excluded evacuee properties the respondents can get no benefit from the fact that in the 1959 notification evacuee properties had been excluded."

45. From the judgment in Madan Lal Nangia<sup>5</sup>, three propositions of law emerge:

- (i) At the time of acquisition of evacuee property under Section 12 of the 1954 Act if such property has interest of a private person, the interest of private person can be acquired under the LA Act even though the land is owned by the government.
- (ii) The properties that vest in the Custodian as evacuee properties can be acquired for some other public purpose.
- (iii) When a challenge is laid to the acquisition of the land at a belated stage then if the court is inclined to allow such a belated challenge, it must first satisfy itself that the person challenging acquisition has title to the land.

46. What follows from proposition (i) is also this that after the acquisition of evacuee property under Section 12, if any encumbrance is created or interest of a private person intervenes therein, such land even if owned by the government can be acquired under the LA Act. This is in congruity and consonance with Sharda Devill as well.

47. When the facts of the instant case are seen in light of the above legal position, we are of the considered view that the appeal must fail. In the first place, as noticed above, by approval of the highest bid given by the appellant's husband followed with provisional possession, an

encumbrance was created in 1960 in the subject land which was part of the compensation pool before the acquisition proceedings were initiated and, therefore, it could have been acquired by the Delhi Administration under the LA Act. Secondly, and equally important, the acquisition which was commenced by Section 4 read with Section 17(1)(iv) Notification issued on 07.03.1962 which ultimately culminated into an award on 30.06.1962 was challenged for the first time after more than thirty years of the passing of the award. The appellant has failed to show her title or her husband's title in the property on the date of the acquisition. As a matter of fact, though the approval to the highest bid given by the appellant's husband in respect of the subject property was given on 31.10.1960, the payment of full price by the appellant was made pursuant to the communication dated 16.06.1980 but by that time the subject land already stood acquired by the Delhi Administration and, therefore, despite the payment of full price by the appellant in 1980 and the issuance of the sale certificate, no title came to be vested in the appellant. The legal position that we have summarised with regard to transfer of title in respect of the property forming part of the compensation pool put to public auction under Rule 90 of the 1955 Rules in the earlier part of the judgment does not help the appellant at all because of completion of acquisition proceedings in 1962 much before the payment of full purchase price by the appellant. In the absence of any title in favour of the appellant or her husband on the date of acquisition, the challenge to such acquisition could not have been allowed by the Single Judge. The Division Bench rightly set aside the erroneous order of the Single Judge.

48. In view of the above, appeal has no merit and is liable to be dismissed and is dismissed with no order as to costs.

49. It is, however, clarified that appellant's claim for compensation, refund or any other monetary claim shall be considered and/or decided on its own merits in accordance with law and the present judgment shall have no bearing in relation to such claim.

.....J.

(R.M. Lodha)

.....J.

(Anil R. Dave)

NEW DELHI  
JANUARY 29, 2013.

ITEM NO.1A  
FOR JUDGMENT

COURT NO.5

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4373 OF 2009

SARASWATI DEVI (D) BY LR.

Appellant (s)

VERSUS

DELHI DEVT. AUTHORITY & ORS.

Respondent(s)

Date: 29/01/2013 This Appeal was called on for judgment today.

For Appellant(s) Mr. Annam D.N. Rao,Adv.

For Respondent(s) Mr. Vishnu B. Saharya, Adv. for  
M/S Saharya & Co.,Adv.

Mr. Utkarsh Sharma,Adv. for  
Ms. Rachana Srivastava ,Adv

UPON hearing counsel the Court made the following  
O R D E R

Hon'ble Mr. Justice R.M. Lodha pronounced the judgment of  
the Bench comprising His Lordship and Hon'ble Mr. Justice Anil R.  
Dave.

Appeal is dismissed in terms of signed reportable  
judgment. No costs.

Pending I.A., if any, stands disposed of.

| (Pardeep Kumar)  
| Court Master

| | (Renu Diwan)  
| | Court Master

[ SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE ]

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- [1] AIR 1965 SC 1994
  - [2] 29 (1986) DLT 246
  - [3] 1997 Rajdhani Law Reporter 101
  - [4] M.S. Dewan v. Union of India & Ors. [C.W.P. No. 1400/1986]; Decided  
on 06.02.2003.
  - [5] (2003) 10 SCC 321
  - [6] AIR (1963) Punjab 532
  - [7] AIR (1964) Punjab 99
  - [8] AIR 1958 SC 289
  - [9] (1994) 5 SCC 471
  - [10] (2005) 4 SCC 572
  - [11] (2003) 3 SCC 128
  - [12] AIR 1924 Patna 362
  - [13] AIR 1955 SC 298
  - [14] AIR 1964 Madras 209
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