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

+ **LA.APP.No.598/2009**

SHIV KUMAR ... Petitioner

Through: Mr.S.K.Rout, Advocate and  
Mr.B.K.Routray, Advocate.

versus

UOI & ORS. .... Respondents

Through: Mr.Sanjay Poddar, Advocate with  
Mr.Siddharth Panda, Advocate for UOI.  
Mr.V.P.Rana, Advocate for R-2 to R-9.

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

% **ORDER**  
**29.07.2011.**

1. Settlement has failed between the parties.
2. The appeal, which I note was originally by way of a Civil Miscellaneous Main, lays a challenge to orders dated 13.7.2007 and 16.7.2007.
3. On 16.7.2011, I had noted the relevant facts on which the parties were litigating. I reproduce the order. It reads as under:-

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physical file have been compared and  
the digital data is as per the physical  
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"LA.APP.No.598/2009

1. Munshi, Risal and Jai Lal were 3 brothers.
2. One Manohar Lal Seth was the recorded owner of the land in respect whereof, pursuant to acquisition, dispute of apportionment has arisen.
3. Munshi died in the year 1949 i.e. prior to the enforcement of the Delhi Land Reforms Act 1954, which Act came into force in the year 1958.
4. Manohar Lal Seth was the recorded owner of the land when the Delhi Land Reforms Act 1954 was promulgated and it was shown therein i.e. the revenue records, that Risal and Jai Lal were non-occupancy tenant under him i.e. Manohar Lal Seth. They alone were declared as bhoomidar of the land.
5. Claiming that petitioner and respondent No.9 were the minor sons of Munshi and that the benefit of non-occupancy tenancy right, being recognized as bhoomidar when Delhi Land Reforms Act 1954 came into force, accrued even to the petitioner and respondent No.9, they raised a dispute.
6. Petitioner and respondent No.9 filed a civil suit seeking declaration that they were entitled to be recorded as co-bhoomidars of the land; with 1/3<sup>rd</sup> share therein. The suit was decreed.
7. In the year 1971, in the celebrated decision reported as Hathi vs. Sunder AIR 1971 SC 2023 the Supreme Court held that where a revenue dispute was, under the relevant enactment, to be litigated at a revenue forum, decrees passed by Civil Court would be a nullity.
8. Appeal filed by the opposite party was allowed following the decision in Hathi's case supra but with a caveat. The caveat was that parties could raise the

issue before the Revenue Assistant.

9. Petitioner and respondent No.9 thereupon filed a proceedings under Section 11 of the Delhi Land Reforms Act 1954. The proceedings were pending when the said lands were acquired.

10. On a reference made to the Reference Court, the litigating parties, save and except the petitioner have entered into a compromise and as a result of the impugned order, 1/6<sup>th</sup> compensation being retained, the remainder has been held as outside the scope of litigation between the parties.

11. I have attempted to resolve the matter and parties have agreed that one elder each from the branch of the family of Munshi, Risal and Jai Lal would sit and try to solve the matter.

12. It has been agreed that the petitioner, Sardar Singh S/o Risal Singh and Brahm Dutt S/o Jai Lal would sit and try to settle the matter.

13. Re-notify for 29.7.2011."

4. It is not in dispute that the result of the 2 impugned orders is that the undisputed amount which in any way would be payable to the private respondents has been released to them and such amount has been retained by the Court which would satisfy the claim of the appellant; should the claim succeed. If the claim were to fail the said amount would have to be paid to the private respondents.

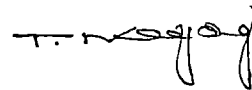
5. I see no scope for the appellant to question the impugned orders inasmuch as what has been disbursed is admittedly not that of the appellant. What has been retained is enough security for the appellant inasmuch as the amount retained by

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the Court equals the claim of the appellant and he would get the same if the Reference Court, decides the apportionment of the compensation in his favour.

6. The Reference Court has yet to decide on the apportionment of the compensation and thus I dismiss the appeal requiring the Reference Court to decide the reference.

7. TCR be returned forthwith.



**PRADEEP NANDRAJOG, J.**

**JULY 29, 2011**  
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