

\$~79

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

Date of decision: 16.09.2019

+ W.P.(C) 2179/2016

BIJENDER SINGH & ORS

..... Petitioners

Through: Mr. Rajesh Gupta and Mr. M.C.
Verma, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Rajesh Kumar, Adv. for UOI.
Mr. Rajneesh Sharma, Adv. for
LAC/L & B.
Mr. Arjun Pant, Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (Oral):

1. Petitioners have filed the present writ petition, seeking a declaration under Section 24(2) of the Right to fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(hereinafter as 'the 2013 Act'), to the effect that the land acquisition proceedings in respect of land at Khasra. no. 49/17 (4-16), 49/24 (4-16) and 59/3 (1-00) situated in Pehladpur Banger, Delhi (hereinafter as 'subject land') acquired vide Award bearing No. 6/2005-06, are deemed to have lapsed since the Award was made more than five years prior to the commencement of this Act and the possession of the subject land has not been taken over by the authorities.

2. The following reliefs are sought by the petitioners:

(11)

(I) Issue writ of DECLARATION and/or any other appropriate Writ, Order or Direction in the like nature declaring the impugned acquisition proceedings commenced vide notification under Section 4 of Act 1894 bearing no. F.11(19)/01/L&B/LA/20112 Dated 21.03.2003 resulting in Award no. 6/2005-06 for Village Pehlادpur Banger Delhi vis-a-vis subject land stands lapsed;

(II) Consequently issue writ of CERTIORARI quashing the impugned acquisition proceedings commenced vide notification under Section 4 of Act 1894 bearing no. F.11(19)/01/L&B/LA/20112 Dated 21.03.2003 resulting in Award no. 6/2005-06 for Village Pehlادpur Banger Delhi vis-a-vis subject land

(III) Issue MANDAMUS and/or any other Writ, Order or direction in the like nature commanding the respondents not to interfere with and/or obstruct the petitioners in peaceful enjoyment of the subject land situate in village Pehlادpur Banger, Delhi;

(IV) Pass any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

3. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter 'the LAA'), was issued on 21.03.03 vide notification F.11(19)/01/L&B/LA/20112 and declaration under Section 6 of the Act was made on 19.03.2004 vide notification No-F.11(15)/04/L&B/LA/28227. Subsequently, the Award bearing no. 6/2005-06 dated 12.07.2005 was passed in respect of subject land. The land was acquired for public purpose i.e. "Rohini Residential Scheme", under Planned Development Scheme of Delhi.

4. As per the petition, Petitioners are related to one another having common ancestor and having inherited co-ownership over the subject land. It is submitted that although the Petitioners have received compensation,

however the physical possession thereof has not been taken. Moreover, the subject land has not been utilized for the purpose for which the acquisition was done. The Plaintiffs have attached the photographs of the subject land as a proof of possession in the petition. It is further alleged that barring the Petitioners, compensation has not been paid to majority of the landowners whose land are covered by impugned acquisition notification. The impugned acquisition proceedings are marked by excessive delay. The subject land was notified for acquisition in the year 2003 and since then, till the institution of the present petition, no development plan has been made or put into action. It is thus the submission of the Petitioners that due to the aforementioned reasons the acquisition stands lapsed under Section 24(2) of the 2013 Act.

5. The Land Acquisition Collector (LAC)- Respondent No.5, in the counter affidavit, at the outset has denied the allegations made in the writ petition. It is the stand of the LAC that the possession of the subject land was taken by the Government on 26.08.2005 and 31.08.2005. Regarding compensation, it is averred that Rs. 81,79,224.20/- has been paid to the recorded owners, the details are reproduced hereunder:

SR. NO.	RECORDED OWNER	DETAILS	CHEQUE NO/ DATE
1.	Sh. Parmanand s/o Sh. Bhim Singh (1/2 share)	Rs. 40,89,612/-	577030 dated 09.11.2005
2.	Smt. Sademi w/o Sh. Dayanand	Rs. 10,22,403/-	577031 dated 09.11.2005
3.	Sh. Krishnan s/o Sh.	Rs.	577032 dated

18

	Dayanand	10,22,403/-	09.11.2005
4.	Sh. Rajesh s/o Sh. Dayanand	Rs. 10,22,403/-	577033 dated 09.11.2005
5.	Sh. Surender s/o Sh. Dayanand	Rs, 10,22,403/-	577034 dated 09.11.2005

It is further contended that the public purpose involved in the acquisition is clearly mentioned in the notification and the acquisition does not suffer from any infirmity or irregularity.

6. Delhi Development Authority (DDA)- Respondent No.3, in its counter affidavit, has affirmed the stand taken by Respondent No. 4. It is stated that the physical possession of the subject land was handed over to DDA by the LAC/ L&B Department, Government of NCT of Delhi on 31.08.2005 and the subject land was further transferred to RPD-IV for Rohini Residential Scheme. A report of the Possession proceedings dated 31.08.05 has also been annexed. The compensation was paid to LAC, vide cheque No. 074064 dated 09.08.2005 for Rs. 80,40,76,004/-. It is also contended that the Petitioners have failed to place on record any document in support of their right and title over the subject land. No rejoinder has been filed by the petitioners to the counter-affidavit of the LAC and DDA.

7. It should be noted at this stage that initially on the application filed by the Petitioners for interim relief, being **CM Appl .No. 9319 of 2016** in the present petition, this Court on 15.03.2016 directed the parties to maintain status quo. Thereafter, this Court dismissed the said application and vacated

(14)

the interim relief granted vide order dated 22.11.2018, which reads as under:

*"1. The Court has been shown copies of the order dated 18th October, 2016 and 10th March, 2015 in SLP(C) No. 16385-16388 of 2012 titled **Rahul Gupta v. Delhi Development Authority & Ors.** whereby the Supreme Court has made it clear that all interim orders passed by this Court in relation to the land acquisition proceedings for the Rohini Residential Scheme shall stand vacated. The parties were also permitted to produce the order before this Court and ask for vacation of the stay order.*

2. In that view of the matter, the interim order passed by this Court on 15th March, 2016, and which has continued till date, hereby stands vacated.

3. CM No. 9319/2016 is dismissed."

8. The assertion by the Petitioners that they continued to remain in possession of the subject land gives rise to a disputed question of fact which cannot be examined in the current proceedings. Additionally, considering that the acquisition in the present case was for the 'Rohini Residential Scheme', the possession of the subject land is deemed to be with the DDA in terms of the order of the Supreme Court in **Rahul Gupta vs. DDA, SLP (C) 1635-88 of 2012** vide order dated 18.10.2016. The relevant portion is reproduced hereunder:

"Heard Mr. V. Giri, learned Senior Counsel appearing for the applicants and perused the interlocutory applications.

In view of the order dated 10.03.2015, passed by this Court in SLP (C) Nos. 16385-16388 of 2012, and a subsequent order dated 28.01.2016, passed in the same special leave petitions, the interim order passed by the High Court of Delhi on 04.3.2015 in W.P.(C) No. 1915/2015 (Annexure A-4 in the instant interlocutory applications), is liable to be vacated, and is

15

accordingly vacated.

We grant liberty to the Delhi Development Authority to produce a copy of this order in all matters, pertaining to land acquisition relating to the Rohini Residential Scheme, pending before the High Court, for vacation of similar interim directions.

It is made clear that in case the applicants have re-entered possession or otherwise, they shall vacate the said land and hand over its possession forthwith to the Delhi Development Authority, failing which it shall be assumed to be in possession of the Delhi Development Authority, after the expiry of ten days from the passing of the instant order.

With the aforesaid directions, these interlocutory applications stand disposed of."

(emphasis supplied)

9. Reliance may also be placed on the decision of the Division Bench of this Court in ***Shri Desh Raj Arya & Ors vs Government of NCT of Delhi & Ors***, W.P. (C) 11645/2017 decided on 06.02.2019. The relevant portion reads as under:

"8. Consequently, the prayers in the present petition cannot be granted. In any event, the assertion by the Petitioners that they continued to remain in possession of the land in question or that they have not received compensation gives rise to disputed questions of fact which cannot possibly be examined in these proceedings. Additionally, considering that that the acquisition in the present case was for the Rohini Residential Scheme, possession of the land in question is deemed to be with the DDA in terms of the decision dated 18th October 2016 of the Supreme Court in the IAs in SLP (C) 16385-88 of 2012 (Rahul Gupta v. DDA)".

(emphasis supplied)

10. Similarly, the Division Bench of this Court in *Sube Singh vs. Lt Governor NCT of Delhi and Ors*, W.P.(C) 7973/2016 decided on 25.03.2019, held as under:

"9. These directions were repeated in the remaining I.As which were disposed of on the same date i.e. 18th October 2016. In effect therefore, the position is that if anyone still in possession of lands acquired for the Rohini Residential Scheme had not surrendered possession thereof to the DDA within ten days of the order dated 18th October 2016, then the possession thereof was deemed to be with the DDA. It would no longer be open to such persons to contend that actual physical possession of the lands in question remains with them.

10. This legal position has been clarified by this Court in its order dated 22nd November 2018 in W.P. (C) 51118/2016 (Jawahar Singh v. Lt. Governor) and reiterated in the order dated 25th January 2019 in W.P. (C) 3438/2015 (Krishna Devi v. Union of India)."

(emphasis supplied)

11. At the outset learned counsel for the Petitioner has been queried about the delay in filing the present petition. However, no purposeful explanation has been tendered in the petition to justify the inordinate delay in coming forward to challenge the present acquisition proceedings. The Award for the subject land was passed in 2005, whereas the present petition has been filed after more than 10 years. The petition is obviously barred by laches.

12. The Supreme Court has dealt with issue of delay and laches in *Mahavir*

v. *Union of India*, (2018) 3 SCC 588, in the context of the 2013 Act. The said judgment is unambiguous in emphasising that claims that are barred, and where there is total inaction, are not meant to be revived by the 2013 Act. The relevant observations of the Supreme Court in the said decision read as under:

"22. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, Section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under Section 31(1) in such cases would attract only interest as envisaged under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.

23. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of

inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.

25. xxx

xxx

xxx

26. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24(2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years."

(emphasis supplied)

13. The aforesaid Judgment has been considered by the Supreme Court in the decision of *Indore Development Authority v. Shailendra* reported at (2018) 3 SCC 412, relevant portion of which is reproduced hereunder:-

"128. In our considered opinion section 24 cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of section 24(2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in

which such plea ought to have been raised and such decisions would operate as *res judicata* or constructive *res judicata*. As either the plea raised is negated or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

129. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negated, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in Pune Municipal Corporation (*supra*), and this Court never, even for a moment, intended that such cases would be received or entertained by the courts."

(emphasis supplied)

20

14. This Court has also dealt with the issue of delay and laches in the case of *Mool Chand v. Union of India* (W.P. (C) 4528/2015) dated 17th January 2019, wherein the Court while elaborating the decision of *Mahavir v. Union of India*, (2018) 3 SCC 588 and *Indore Development Authority v. Shailendra*, (2018) 3 SCC 412, on the aspect of delay and laches, made the following observations:

"34. The question then arises whether only the points of difference between the decisions in *Pune Municipal Corporation (supra)* and *Indore Development Authority v. Shailendra (supra)* and all issues incidental thereto have been referred to the Constitution Bench? In this context it requires to be noted that although several questions were framed in *Indore Development Authority v. Shailendra (supra)*, it is only on Question I, viz., on whether the deposit in the RD Account would amount to having tendered compensation for the purposes of Section 24 (2) of the 2013 Act, that there was a difference of opinion between the view expressed in the two decisions viz., *Pune Municipal Corporation (supra)* and *Indore Development Authority v. Shailendra (supra)*.

35. The other point of difference was that arising in *Yogesh Neema v. State of MP (supra)* where the correctness of the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra)* as regards exclusion of the period covered by the interim orders from the calculation of the period of five years under Section 24 (2) of the 2013 Act was questioned. On this point the three-Judge Bench in *Indore Development Authority v. Shailendra (supra)* unanimously overruled the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra)*. On this issue no subsequent Bench of the Supreme Court of co-ordinate strength appears to have taken a contrary view. It is doubtful, therefore, whether this issue would be examined by the Constitution Bench.

36. *Relevant to the issue on hand, there was no difference of view qua Question III addressed in Indore Development Authority v. Shailendra (supra) i.e. "Whether section 24 of Act of 2013 revives barred and stale claims?" On this question there was no view (much less a contrary view) expressed in Pune Municipal Corporation (supra) or for that matter in any other subsequent decision of a smaller, co-ordinate or even larger Bench of the Supreme Court. This question, therefore, was not the subject matter of reference before the Constitution Bench.*

37. *Consequently, this Court is of the view that although the order passed by the Constitution Bench refers to "all the aspects" being considered by the Constitution Bench, that expression would not include questioning the correctness of the decision of the three-Judge Bench in Indore Development Authority v. Shailendra (supra) as far as it holds by a unanimous opinion that Section 24 (2) of the 2013 Act cannot revive old and stale claims."*

(emphasis supplied)

15. This Court passed similar decisions vide judgments dated 31st January 2019 in W.P. (C) 586 of 2016 (*Sushma Purthi v. Union of India*), 25th January 2019 in WP (C) 4919 of 2014 (*Krishan v. Union of India*), 5th February 2019 in W.P. (C) 2702/2019 (*Mohd. Mian v. Union of India*), dismissing similar petitions, seeking a declaration under Section 24(2) of the 2013 Act, on the ground of delay and laches. Challenge against these judgments have been dismissed by the Supreme Court vide SLP (C) No. 11481/2019, SLP (C) No. 13423/2019 and SLP (C) No. 8848/2019, respectively. It also needs to be emphasized that this court has also dismissed several other petitions on the ground of delay and laches and challenge against those decisions before the Supreme Court has also been dismissed.

72

16. Following the aforementioned decisions and in light of the facts and circumstances listed out hereinbefore, the present petition is dismissed on the ground of laches as well as merits.

Sanjeev Narula

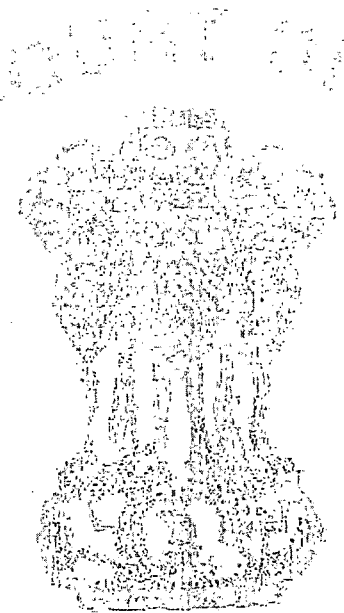
SANJEEV NARULA, J

Vipin Sanghi

VIPIN SANGHI, J

SEPTEMBER 16, 2019

nk



सुप्रीम कोर्ट ऑफ इंडिया