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

+ W.P. (C) 6890/2014, CM APPL.16259/2014 & 22314/2015

SHIVALA SHIVJI MAHARAJ & ORS Petitioners

Through: Mr. Virendra Rawat, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Yeeshu Jain, Standing Counsel for
L&B/LAC with Ms. Jyoti Tyagi, Advocate.

Mr. Pawan Mathur, Advocate for DDA.

Mr. Y.K. Kapur, Advocate for Intervenor.

Mr. Vivek Goyal, CGSC for UOI with Ms. Vanya
Khanna, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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18.04.2017

The present petitioner seeks a declaration under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter referred to as Act of 2013) contending that the possession of the acquired lands (Khasra No.315 (6-5), 316 (2-10) and 317 (4-16) of village Chhatarpur, Delhi was never taken.

In this case, the Notification under Section 4 of the repealed Land Acquisition Act was issued on 25.11.1980; a declaration was issued on 07.06.1985. Apparently, the Award in this case was made

on 05.06.1987. The petitioners claim to be in continuous and uninterrupted possession of the said land and submit that since compensation was not tendered to them, acquisition has elapsed.

It is also stated that the petitioners are owners of the land - to say so, firstly, they rely upon the Gift Deed of 1907 said to have been executed by local villagers dedicating the land classified as Shamlat Thok to them. It is also stated that this event was recorded in 1920 in the jamabandi and revenue records. The petitioners further rely upon a decree made by the Civil Court declaring their rights as owners of the land.

The respondents/GNCTD contest the claims. It states that at no point of time, i.e., neither at the stage when Section 4 and 6 Notifications were issued, nor at the stage of making the Award were the petitioners shown to be recorded as owners. It has produced a copy of the certified extract of the Revenue records (jamabandi) to say that the land continued to be shown in 1990 as Shamlat Deh. It is also stated that since the petitioners never claimed possession of the land and has not shown its entitlement to the awarded amount, the question of deposit of compensation in their favour did not arise.

Section 24 (2) of the Act of 2013 - in the light of declaration of law in *Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors* (2014) 3 SCC 183 and the subsequent judgments, is categorical, in that where the recorded land owner is either not dispossessed of the land which was owned by him but acquired later, or no compensation was tendered, the acquisition

would elapse. The petitioners approached this Court nearly three decades after the Award had been made. Further, in the present case, the question as to the petitioner's title and indeed even its continuous possession appears to be in controversy. Although, the petitioners assert to be in continuous possession since 1907, the records speak otherwise. As of 1990, the revenue records stated that the land was Shamlat Deh - contrary to the petitioners' assertion. The subsequent decree relied upon by the petitioners in the opinion of the Court is of no avail given that the land had vested in the appropriate Government after possession was taken and after the determined compensation was deposited or paid to the recorded land owners.

Similarly in W.P.(C) 129/2017 (judgment delivered on 10.04.2017), the petitioners sought direction under Section 24 of the Act of 2013. The brief facts were that the petitioners claimed to be descendants of residents Kalu and Nathu of Village Raisina and according to record, Village Raisina was a subject matter of acquisition. It was contended that despite inclusion of the lands in the notification and determination of the compensation, the purchasers Kalu and Nathu did not receive the compensation; thereby the petitioners sought declaration and direction under Section 24. However, the petitioners here as in the present case approached the Court after an inordinate lapse of time. The Court in that case stated that the question was a unique one - i.e. the parties claimed to be aggrieved to approach this Court, waking up like Rip Van Winkle or what may be, in Indian Parlance called a '*Kumbkarna*' lapse of time.

In other words, was it open to the petitioner or a set of petitioners to resuscitate grievance several generations later to claim the protection of a later law? Such claims were never under contemplation when the acquisition was resorted to. The petitioners in that case asked this Court to infer and conclude that in the absence of some indication from the records made available by them, that their ancestors did not ever receive any compensation. No contemporary record in the form of letters, protest by them or any other communication stating that compensation was not disbursed or reference to civil proceedings for release of the amounts or seeking decree have been relied upon by the petitioners. The Court held that if the petitioners were to be allowed to raise such grievances the courts would be open to claims from each succeeding generation, which may say that the previous generation had not received their just dues. Such claims were held to be not adjudicated upon, as they are barred and the writ petition was dismissed.

For the similar reasons as above, the writ petition is unmerited; it is therefore dismissed.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 18, 2017

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