

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

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Date of decision: 15th December, 2017

+ W.P.(C) 9880/2016, CM No. 39329/2016

MAYA DEVI & ORS

..... Petitioners

Through: Mr. S.K. Rout, Adv. and
Mr. Aman Mehrotra, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for
L&B/LAC
Mr. Sanjeev Sabharwal, Standing
Counsel for DDA with Mr. Hem
Kumar, Adv. and Ms. Simmee
Kumari, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. This is a petition filed by the petitioners under Article 226 of the Constitution of India seeking a declaration that the acquisition proceedings with respect to the land comprised in Khasra Nos. 1322/26 (0-4) 1/4 share admeasuring 1 biswa, and 28 (1-13) 1/4 share admeasuring 16 biswa and 6 biswansi total admeasuring 17 biswa 6 biswansi, situated in Village Sadhora Khurd, District Central, Delhi (hereinafter referred to as “subject land”) are deemed

to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (New Act) as the compensation has not been paid to the predecessor in interest of the petitioners.

2. The necessary facts to be noticed for disposal of the writ petition are that a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 19th October, 1962. Section 6 declaration was made on 21st December, 1962 and thereafter an Award was announced on 28th June, 1963 being Award No. 1593.

3. Learned counsel for the petitioners relies on the New Act in support of his submission that since the compensation has not been received by the petitioners, the acquisition proceedings qua the land of the petitioners are liable to lapse and petitioners would be entitled to compensation in terms of Section 24(1)(b) of the New Act.

4. Learned counsel for the LAC has opposed this petition, firstly on the ground of delay and laches. It is contended that possession of the subject land was taken over and handed over to the DDA, as far back as on 17th August, 1963. Mr. Sanjeev Sabharwal, Standing Counsel for DDA and Ms. Jyoti Tyagi, counsel for the respondent LAC contended that from 1963 till date the petitioners have taken no steps to seek compensation as at the relevant time there was a dispute between the parties. Ms. Tyagi relies on the communication dated 19th February, 1964 addressed to the Additional District Judge Delhi by the Office of the Deputy Commissioner Delhi (Land Acquisition Branch). Regarding the

payment of disputed amount in the subject award along with this communication, copy of the Form 'D' and Form 'A' giving package of payment deposited has been produced. Accordingly, she submits that on account of dispute between the parties which is evident upon reading the communication dated 19th February, 1964, which is taken on record under Section 30 and 31 of the Land Acquisition Act, 1894, the LAC deposited the amount in the Court of Additional District Judge. Counsel submits that the petitioners can have no knowledge with regard to the receipt of compensation by their grandfather as the compensation was deposited in the name of their grandfather and no such objection was even raised by their deceased father and thus they cannot have a better right or title than their deceased father or grandfather.

5. Mr. Rout submits that the LAC has failed to produce any documents on record to show that in fact compensation was received by the predecessor in interest of the petitioners. He submits that the so-called dispute which has been projected is fictitious and on the contrary to the facts of the case. The petitioners would be entitled to the benefit of Section 24 of the New Act.

6. We have heard learned counsel for the parties.

7. The basic facts which we have recorded in the abovestated paragraph as far as the issuance of notification under Section 4 of the Land Acquisition Act, 1894 on 19th October, 1962, Section 6 declaration made on 21st December, 1962 and an Award was announced on 28th June, 1963 being Award No. 1593 and handed

over the possession to the DDA on 17th August, 1963, are not in dispute. The only dispute between the parties is as to whether the LAC has tendered the compensation to the predecessor in interest of the petitioners or not. Closely connected to this issue is the fact whether the compensation was deposited by the LAC in the Court of the ADJ and whether the ADJ had issued notice to the petitioners and, in fact, whether the compensation was paid or not. No doubt, above three issues which we have concluded are relevant to resolve the dispute between the parties, however in the present case a Section 4 notification was issued way back in the year 1962, and even the possession was taken on 17th August, 1963. It was first upon to the petitioners to give a reasonable plausible explanation for the delay in claiming the compensation or at least raising a dispute that no compensation has been paid. The Court cannot lose sight of the fact that neither the predecessor in interest of the petitioners being their grandfather in whose favour the right accrued and whose name is mentioned in the documents filed with counter-affidavit, had agitated this claim during his life time. That apart even the father of the petitioners never raised the issue of non-receipt of compensation. Thus, in our view, none of the petitioners predecessor in interest in the form of two earlier generations made any representation to the LAC specially when they were deprived of their land as far back as in the year 1968. The writ petitioners have not given any explanation for the delay in approaching this Court. It is obvious that the petitioners have filed this writ petition under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

after coming of this Act. However, in this matter, on account of delay, the onus cannot be shifted on the LAC either to show that notice was issued to the predecessor in interest of the petitioners or the amount was paid as it is reasonably accepted that the LAC would not maintain records for over five decades. We have put the same question to the learned counsel for the petitioners that the petitioners must produce the bank statements of the predecessor in interest to show that no amount was received by them, and the obvious answer is that nobody would maintain records for five decades. Thus, we cannot shift the burden on the LAC especially when, the petitioners two earlier generations, did not ever make a complaint regarding non-receipt of compensation. We may hasten to add that we are not showing that ordinarily, the onus is not on the LAC to show that not only the amount was deposited before the LAC but also paid to the original owners but this order has been passed keeping in view the fact that the petitioners took too much time in approaching this Court.

8. We cannot permit the petitioners to illegally enrich themselves when they themselves and their predecessors have chosen to remain silent till the date of coming into effect 2013 Act. Our view is fortified by the decision of the Supreme Court in the case of ***Mahavir & Ors. vs. Union of India & Anr.***, Special Leave Petition (C) No. 026281/2017, decided on September 08, 2017. Paras 21, 22 and 23 read as under:

21. 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.

22. 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.

23. The High Court has observed that Raisina is a part of the Lutyens zone of Delhi. It is prime of New Delhi and Government offices etc. are located. The petitioners asked the High Court to infer and conclude that in the absence of some indication of the record being made available by them that their ancestors have not ever received any compensation. How the petitioners came to know that their ancestors had not received compensation has not been disclosed in the petition. The High Court has rightly declined to entertain such claims. The protective umbrella of section 24 is not available to barred claims. If such claims are entertained under section 24, it would be very-very difficult to distinguish with the frivolous claim that may be made even after tampering the records etc. or due to non-availability of such record after so much lapse of time. Once right had been lost due to delay and laches or otherwise, it cannot be revived under provisions of section 24 of the Act of 2013. The intendment of Act

2013 is not to revive stale and dead claims and in the concluded case when rights have been finally lost. If there is delay and laches or claim is otherwise barred, it is not revived under section 24(2) of the 2013 Act. The provision does not operate to revive legally barred claims.

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.”

9. For the reasons aforesaid, we find no merit in the writ petition. The writ petition is dismissed.

CM No. 39329/2016

The application is dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 15, 2017/aky