

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

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Date of decision: October 30, 2017

+ W.P.(C) 7147/2015

OM PRAKASH & ORS

..... Petitioners

Through: Mr. J.C. Mahindro, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel with Ms.
Jyoti Tyagi, Adv. for respondent L&B/LAC.
Mr. Pawan Mathur, Standing Counsel

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner challenging the Notifications under Section 4 and 6 of the Land Acquisition Act, 1894 and Award No. 207 dated March 04, 1915 with a consequential prayer that the respondents be directed not to interfere and dispossess the petitioners from their land situated in Khasra Nos. 106, 107 and 108 of village Zamrudpur, New Delhi.

2. In substance, the case of the petitioners is that in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'New Act'), the acquisition proceedings have lapsed. The case of the three petitioners is that the Predecessor in Interest of the petitioners were lawful owners of the land being Khasra Nos. 106, 107 and 108 of village Zamrudpur, New Delhi in whose favour the lands were transferred by one Ikramuddin, S/o Ziauddin Ahmed on October 10, 1887 vide a Registered Sale Deed. The British Government sought to acquire the land vide a Notification issued on December 21, 1911. The writ petition does not aver when exactly the Notification under Section 6 of the Land Acquisition Act was issued nor the date when the Award

was pronounced. It is averred that photocopy of the certified copy of the payment register shows non-payment of any amount to the Predecessor in Interest of the petitioners and the cultivation of the land by the Predecessor in Interest of the petitioners and no possession of land was ever taken by the British Government or by the Indian Government.

3. It is petitioners case that after partition, the land was taken over by the Indian Government and was given for the occupation of the refugees. The Writ Petition refers to filing of Writ Petition No. 206/86 by petitioner No.1, which was dismissed. It is their case that despite various attempts to trace out the records from various Departments with regard to their title to the said lands and by taking aid of the Right to Information Act, petitioner No.1 was able to find that there was no compensation ever paid to his family in respect of the lands belonging to his Grandfather Sh. Sukhdev, S/o late Sh. Ram Ratan till date and no possession ever taken lawfully from him or from his Predecessor in Interest and seeks a protection under Section 20(4) of the New Act.

4. Despite time granted to the respondents to file counter affidavit, the same has not been filed by the respondents.

5. We have heard the learned counsel for the parties.

6. Mr. J.C. Mahindro reiterates the submissions as made in the writ petition. Mr. Yeeshu Jain, learned counsel for the respondent/LAC opposes the petition on the ground that the same is highly belated and relies upon the judgment of this Court in the case of ***Mukesh & Ors v. Union of India & Ors W.P.(C) No. 7532/2015 decided on May 02, 2017***, wherein this Court refused to grant relief to the petitioner in respect of a similar claim made by the petitioner with regard to the land situated at Village Raisina wherein a reference was made to the judgment of this Court in ***Mahavir & Ors v. Union of India & Ors W.P.(C) No. 129/2017 decided on April 10, 2017***.

7. The question, which arises for consideration is whether the petitioners can challenge an acquisition, which was effected on December 21, 1911 i.e after almost

106 years. The answer to such a question has to be in negative. We are of the view that the case in hand is covered by the judgment of this Court in the case of ***Mahavir & Ors v. Union of India & Ors (supra)***, wherein in paras 5 and 6, the Court held as under:-

“5. It is not disputed that the lands over which the petitioner lays claim were a part of Raisina village which was acquired and on which much of lutyens Delhi has been built. In these circumstances as to whether indeed the petitioners ancestors were paid compensation or not can be made a subject of enquiry over 104 years later having regard to a later enactment and right which flow directly from it. In the opinion of the Court the award clearly has to be negative. The petitioners are asking 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. In these circumstances if the petitioners are 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 cannot be adjudicated, as they are barred.

6. The writ petition and pending miscellaneous application are dismissed as without merit.”

8. Similarly in the case of ***Mukesh & Ors v. Union of India & Ors (supra)***, this Court relying upon ***Mahavir & Ors v. Union of India & Ors (supra)***, has in paras 5 and 6 held as under:-

5. Sh. Rajneesh Roshan, learned counsel emphasises that the philosophy of Section 24(2) of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013 was that it was intended to be not merely prescribed to work backward, but to operate in respect of the acquisition made at any point of time. He elaborated saying that since many conditions, i.e. that the possession continued or that the compensations not having been tendered were proved, the declaration of lapsing had to be given regardless of the timeline.

6. This Court is of the opinion that reasoning in Mahavir (supra) is squarely applicable in the circumstances of this case. The Court 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, is it open to the petitioners 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.

6. The petitioners in that case asked this Court to infer and conclude 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, protests 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 not to be adjudicated upon, as they are barred and the writ petition was dismissed.”

9. We may note here that the judgment in the case of ***Mahavir & Ors v. Union of India & Ors (supra)*** was taken in appeal before the Supreme Court by the petitioners therein, which was decided by the Supreme Court on September 08, 2017. In paras 25 and 26, the Supreme Court held as under:-

“25. We have seen in a large number of cases that the acquisition had attained finality, compensation had been tendered but not received and development had also taken place. Petitioners are being filed in the courts under the provisions of Section 24(2) of the 2013 Act that they have not been paid any compensation. In fact, if there is any such grievance, they themselves are responsible for not collecting the compensation that was offered and tendered to them. The provision of Section 24 is not intended to apply and extend help in such cases.

26. We are not at all inclined to entertain the instant petition. The Special Leave Petition is liable to be dismissed, and the same is hereby dismissed with cost as in the facts and circumstances of the case we find that there is not only misuse but an abuse of the process of law. Therefore, we impose the costs of Rs.50,000/- (Rupees Fifty Thousand Only) which is to be deposited by the petitioners with the Supreme Court Bar Association in the welfare fund of Advocates within four weeks from today and compliance be reported to this Court.”

10. In view of the discussion above, we do not see any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J

G.S.SISTANI, J

OCTOBER 30, 2017/ak