

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
12

+ **W.P.(C) 2734/2015**

DEVENDER SINGH & ORS. Petitioners
Through: Mr. N. Prabhakar and Mr. Dhruv
Sharma, Advocates.

versus

THE HONORABLE LT. GOVERNOR & ORS. Respondents
Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates.
Mr. Dhanesh Relan, Standing
Counsel with Ms. Gauri Chaturvedi
and Ms. Mrinalini Sharma, Advocates
for DDA.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

%

ORDER
10.12.2018

Dr. S. Muralidhar, J.:

1. The three Petitioners have approached this Court seeking a declaration that the land acquisition proceedings in respect of agricultural land measuring 2 *bigha* and 15 *biswa* to the extent of their undivided 2/3rd share in Khasra No.2711/1660/02 in Village Mehrauli, New Delhi-110030 have lapsed.

2. The precise averments in the petition are that each of the Petitioners represent a branch of his predecessor in interest who apparently had an

interest in the aforementioned land in respect of which a notification under Section 4 of the Land Acquisition Act, 1894 ('LAA 1894') was issued on 13th November 1959. This was followed by a declaration under Section 6 LAA 1894 on 7th January 1969. The Award was passed on 27th October 1983. It is stated that pursuant to the Award, the Land Acquisition Collector ('LAC') took over possession of the land on 29th October 1983.

3. It is then stated that none of the predecessors in interest of the Petitioners were paid any compensation and the LAC in fact referred the matter to the Court under Section 18 LAA 1894. It is simply stated that neither the Petitioners nor their predecessors in interest have received any compensation. No attempt is made to explain the inordinate delay in approaching this Court for relief except stating that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act 2013 ('2013 Act') came into force with effect from 1st January 2015 and under Section 24(2) of the 2013 Act, the Petitioners are entitled to seek a declaration of the acquisition proceedings having lapsed.

4. In the counter affidavit filed on behalf of the LAC, it is confirmed that the award was passed on 29th October 1983 and the actual vacant physical possession of the land measuring 2 *bigha* and 15 *biswa* in the Khasra No.2711/1660/02 was taken on 29th October 1983. It is also stated that as regards the payment of compensation, the entries in *Naksha Muntazim* have been set out in para 6. In respect of two holders of 1/3rd share, references were made to the Court of the learned ADJ and in respect of the owner of

1/6th share also, the matter was sent to the learned ADJ under Section 18 LAA 1894.

5. The fact of the matter is that nothing is stated by the Petitioner as to why they did not approach this Court for seeking relief earlier. The last date in the list of dates is 1983 when the Award was made. In seeking to explain the extraordinary delay in approaching the Court for reliefs, Mr. Prabhakar, learned counsel appearing for the Petitioners, first referred to the decision in ***Aligarh Development Authority v. Megh Singh (2016) 12 SCC 504*** where the stand of the Appellant that it had deposited 80% of the compensation with the LAO and it was for the owners to collect the money was held to be incorrect. It is observed that there is no question of 'come and get' compensation when compulsorily acquiring land. The approach required under law was 'go and give'. This Court does not find this judgment to be of any help to the Petitioners in explaining the inordinate delay in approaching the Court for the relief. That aspect of the matter does not appear to have arisen for consideration in the above decision.

6. Mr. Prabhakar then referred to the decision in ***Delhi Development Authority v. Sukhbir Singh (2016) 16 SCC 258***. There, although the notices under Sections 4 and 5 were issued on 24th October 1961 and 4th January 1969 respectively, the Award could be passed only on 12th December 1997 and possession was taken only on 27th January 2000. The compensation was deposited by the DDA with the LAC in 2002. On facts, it was noted that the admitted compensation was neither paid to the land owners nor deposited in the Court. It was held that the deposit of

compensation in the Government treasury was to no avail. The Court basically followed its earlier decision in the *Pune Municipal Corporation v. H. M. Solanki* (2014) 3 SCC 183. Among the factors that appear to have weighed with the Supreme Court is that the “2013 Act came as a beneficial legislation to the aid, in particular, of poor farmers whose lands had been acquired under the Land Acquisition Act but compensation had not been tendered or paid as required under the said Act”.

7. The delay in approaching the Court for relief was not an issue that was examined in *Sukhbir Singh* (*supra*) at all. It might be possible that in some cases, unlike the present one, the Petitioners may have a good explanation for the delay in approaching the Court for relief. They would have to make an effort, particularly if they are seeking to challenge the Award after more than three decades, to explain why they were prevented from coming to Court earlier. Bereft of any such explanation, it is not possible for the Court to entertain the petition only because the 2013 Act has become operational and the Petitioners are seeking to invoke it for relief.

8. While one of the conditions for invoking Section 24 (2) of the 2013 Act is definitely that the Award must have been more than 5 years old, it does not excuse the Petitioners from explaining, even in respect of such Award, why they could not approach the Court earlier for relief.

9. There is a subsequent judgement of the Supreme Court in *Mahavir v. Union of India* (2018) 3 SCC 588 wherein it was observed as under:

“19. The court is duty bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section

24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this court in which matters had been contested up to this court questioning the acquisition and the petitions have been dismissed by this court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/land owners deliberately or they had refused to collect it and are not ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the treasury which is also deposited as per the State Government's instructions issued time to time relating to how Government money is to be dealt with. The act of failure to deposit money under section 31 after possession is taken only imposes liability to pay higher interest under section 34. The acquisition would not lapse under the Act.

22. In our opinion, the cases in which there is deliberate inaction 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 wilful 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”.

10. The decision in ***Sukhbir Singh*** (*supra*) was, therefore, sought to be distinguished.

11. Even earlier, in the context of challenge to land acquisition proceedings by invoking the jurisdiction of the High Court under Article 226 of the Constitution the Supreme Court in ***Tamil Nadu Housing Board, Chennai v.***

M. Meiyappan & Ors. (2010) 14 SCC 309 held:

“14. At the outset, we must state that on the facts of this case, the High Court was not justified in entertaining the writ petition. In our opinion, the writ petition must fail on the short ground that the writ petition had been filed 16 years after the award was announced by the Collector. It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution. If there is such negligence or omission on the part of the petitioner to assert his right which, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extra-ordinary jurisdiction and grant relief to the writ petitioner.”

12. The Court in the present case is of the view that the Petitioners have failed to satisfactorily explain the delay of three decades in approaching the Court for relief and, therefore, would be disentitled to the discretionary remedy under Article 226 of the Constitution of India.

13. The petition is accordingly dismissed. The interim order stands vacated. The applications are dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 10, 2018

‘dç’