

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: October 09, 2018

Judgment delivered on: October 22, 2018

+ LPA 442/2016 & CM No. 28536/2016

MANGE RAM & ANR THR GPA HOLDER

..... Appellant

Through: Mr. Ravi Gupta, Sr. Adv. with
Mr. L.B. Rai, Adv.
Mr. Syeed Kamran, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Vivek Goyal, CGSC for
UI
Mr. Sanjay Poddar, Sr. Adv.
with Mr. Yeeshu Jain, Standing
Counsel, Ms. Jyoti Tyagi,
Mr. Govind Kumar, Adv. for
L&B Department / GNCTD

AND

+ LPA 717/2016 & CM Nos. 47597/2016, 47599/2016,
47839/2016

MANGE RAM (DECEASED) THR LEGAL HEIRS & ANR

..... Appellants

Through: Mr. Ravi Gupta, Sr. Adv. with
Mr. L.B. Rai, Adv.
Mr. Syeed Kamran, Adv.

versus

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Through: Mr. Vivek Goyal, CGSC for
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 Mr. Sanjay Poddar, Sr. Adv.
 with Mr. Yeeshu Jain, Standing
 Counsel, Ms. Jyoti Tyagi,
 Mr. Govind Kumar, Advs. for
 L&B Department / GNCTD

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 47599/2016 (for delay) in LPA 717/2016

This is an application filed by the appellant seeking condonation of 160 days delay in filing the present appeal.

For the reasons stated in the application, the same is allowed, the delay of 160 days in filing the present appeal is condoned. Application stands disposed of.

CM No. 47839/2016 (for legal heirs) in LPA 717/2016

This is an application filed by Ashwani Kumar S/o Late Shri Mange Ram for himself and on behalf of the other legal heirs of Late Shri Mange Ram for including them as legal heirs of Late Shri Mange Ram for the purpose of filing the appeal.

For the reasons stated in the application, the same is allowed. Application stands disposed of.

LPA 442/2016 & LPA 717/2016

1. These two appeals under Section 10 of the High Court Act have been filed by the appellants challenging the order dated November 26, 2015 (corrected and released on May 25, 2016) whereby the learned Single Judge has dismissed the writ petition being W.P. (C) 6313/2010 filed by Late Shri Mange Ram / Shri Ram Mehar.

2. Even though, one writ petition, being W.P. (C) 6313/2010 was filed and decided by the learned Single Judge along with CM No.12515/2010, two appeals have been filed against the order dated November 26, 2015. These appeals have been filed by one Shri Sachchidanand Rai said to be the General Power of Attorney holder of Late Shri Mange Ram and Shri Ram Mehar, being LPA 442/2016 and the second one by Shri Ram Mehar and by the legal heirs of Shri Mange Ram, being LPA 717/2016.

3. The facts and the issues being common, and the appeals arises from an order dated November 26, 2015 they are being decided by this common order. The facts as noted from the record are that Late Shri Mange Ram (died on February 23, 2016)

and Shri Ram Mehar are displaced persons and in lieu of their properties / land left behind in Pakistan, the Ministry of Rehabilitation, Government of India on September 30, 1966 issued them a '*Sanad*' bearing No.D-914(Hadbust No.22) with respect to acquired evacuee land admeasuring 71 bighas and 5 biswas in Village Jharoda Mazra, Burari, Delhi.

4. It is their case that the physical possession of the said land could not be handed over to them by the respondents, since the said land was in illegal / unauthorized occupation of others. They were at that time given to understand that legal proceedings with regard to the said land are pending and they should await the conclusion of the said proceedings. According to them, the proceedings were decided in favour of the occupants, who were declared as *Bhumidars* of those lands. Vide letter dated April 20, 1989, the work relating to administration, management and disposal of the remaining urban evacuee built up property, urban evacuee plots, rural evacuee agricultural land etc. was transferred by the Government of India to erstwhile Delhi Administration.

5. It was their case that from 1974 till 2005, they kept on visiting the Evacuee Property (EP) Cell for redressal of their

grievance and also made written representations for allotment of alternative land somewhere else in Delhi, but to no avail. That vide official note dated May 19, 2005, it was proposed that some other lands available and belonging to the Custodian of Evacuee Property be allotted to them. According to them, on examination of official records it was found that six parcels of land in revenue Village Civil Station, Sheikh Sarai, Rithala, Haiderpur and Hameerpur total admeasuring 65.09 bighas were available. Accordingly, vide letter dated June 28, 2005, the Managing Officer, EP Cell, GNCTD informed the appellants of allotment of six parcels of land admeasuring 65.09 bighas and asked the appellants to meet the officers in that regard.

6. It was the case of Late Shri Mange Ram / Shri Ram Mehar in the writ petition, that they agreed to accept the said lands in lieu of 71 bighas and 5 biswas of land earlier allotted to them and requested for a new *Sanad* and physical possession thereof. It is noted from the impugned order that certain steps were taken in that respect as is clear from the office notings placed on record but in the meanwhile, the Displaced Persons Claim and Other Laws Repeal Act, 2005 (Repeal Act) was

notified on September 06, 2005 repealing the Displaced Persons (Compensation & Rehabilitation) Act, 1954. It was their case that on December 22, 2006 they lodged a complaint with the Public Grievances Commission for not getting formal possession and allotment of the land; who also found in favour of the appellants but observed that since there was no saving clause in the Repeal Act, no direction could be given.

7. In substance, the allotment of 65.09 bighas of land made in favour of Late Shri Mange Ram and Shri Ram Mehar did not fructify.

8. The Union of India had filed a counter affidavit before the learned Single Judge, in which it was stated that the work regarding the administration, management and disposal of evacuee, urban and rural properties and lands situated in Delhi was transferred to Delhi Administration in 1989 and at present GNCTD, is managing all the affairs and that vide notification dated September 06, 2005, the Displaced Persons (Compensation and Rehabilitation) Act, 1954 has been repealed.

9. The GNCTD in its counter affidavit has *inter alia* pleaded that Late Shri Mange Ram and Shri Ram Mehar have not

approached the Court with clean hands and have suppressed material facts and made wrong and misleading statements. According to the GNCTD the appellants had taken actual physical possession of the 71 bighas and 5 biswas of land allotted to them about four decades ago and they have sold the land to the present occupants thereof or their predecessors. They have given the particulars of the documents at the time of allotment of land which depicts that the land is being described as vacant. Late Shri Mange Ram and Shri Ram Mehar have acknowledged allotment and transfer of land in their favour. They have made no grievance of land or any part thereof being encroached. They have acknowledged the possession of land and satisfaction of their claims. Late Shri Mange Ram and Shri Ram Mehar, after a gap of four decades since the last communication with the Office of the Assistant Settlement Commissioner, had stated that there was encroachment on the said 71 bighas and 5 biswas of land and that they could not take possession thereof.

10. According to GNCTD, the issuance of *Sanad* is the culmination of the entire process, beginning from filing of claim for evacuee property. That after a gap of 38 years since the last

letter to the Managing Officer, Delhi, Late Shri Mange Ram and Shri Ram Mehar came up with a fresh dispute in 2005 that there were illegal occupants on the land. They after accepting the *Sanad*, cannot contend so and even if there are any illegal occupants, it is they, who have to take steps for their removal. In other words, the responsibility of the Evacuee Property Cell / Office of the Settlement Commissioner abates on the issuance of *Sanad*. If Shri Mange Ram and Shri Ram Mehar were dissatisfied, they should have agitated the same before the issuance of *Sanad*, so that all the claims made by them were taken care of.

11. It was stated by the GNCTD that the repeal of the Displaced Persons Act is irrelevant. They emphatically stated that the actual physical possession of the land was taken at the site on July 8/9, 1962. The issuance of *Sanad* on September 30, 1966 implies that Late Shri Mange Ram / Shri Ram Mehar accepted the land allotted to them and the title of the land has been transferred to their names. That all the subsequent disputes are extraneous to the issue; they have denied the visits of Late Shri Mange Ram and Shri Ram Mehar to their office between

1974 to 2005. The letter dated May 04, 2005 is the first communication, after a gap of 38 years. No new rights were created in favour of Late Shri Mange Ram / Shri Ram Mehar in the year 2005.

12. In the rejoinder before the learned Single Judge, Late Shri Mange Ram and Shri Ram Mehar have denied having taken physical possession of the land in the year 1962. They have relied on the documents received through the medium of Right to Information Act, 2005. They have claimed that a decision was taken in the year 2005 to allot alternate land to them but the same could not be fructified owing to the Repeal of the Act. That after the filing of the petition before the learned Single Judge, vide notification dated August 19, 2010, powers have been delegated for disposal of pending claims under the Displaced Persons Act, notwithstanding repeal thereof. They have denied that the grant of *Sanad* is the culmination of the process. They had pleaded that they were working in the Indian Army and posted outside Delhi since 1965 till January, 2002 when they retired and hence could not take any steps, initiating the litigation.

13. The GNCTD in the sur-rejoinder had denied the receipt of

various letters on different dates ranging from 1967 onwards. It is stated that the Repeal Act and the modification thereof by notification dated August 19, 2010 only applies to cases which were pending finality. They have also stated that on September 30, 1980 Late Shri Mange Ram and Shri Ram Mehar wrote to the Deputy Commissioner, of the erstwhile Delhi Administration for correction of revenue records in which they have referred to the occupants of the land as their tenants. Therefore, Late Shri Mange Ram and Shri Ram Mehar were earning the fruits of the land which was allotted to them and with respect whereof *Sanad* has been executed in their favour. The learned Single Judge has rejected the writ petition by holding as under:-

- (i) That the petition has been filed by the petitioners for the first time in the year 2010, notwithstanding the transfer of title in the land to them in the year 1966 on the ground that they have not been delivered possession of the land, which by its inherent nature a factual plea and adjudication whereof cannot be made under Article 226 of the Constitution of India;
- (ii) There is an admission by the learned senior counsel for the petitioners in the writ petition under instructions, during

the hearing that Late Shri Mange Ram had written the letter dated September 30, 1980 wherein it is stated that the occupants are his tenants. The aforesaid proves that in the year 1980 Late Shri Mange Ram had admitted having been put into possession of the land of which the *Sanad* was executed in their favour in the year 1966 and it also proves that they further admitted that they had allowed their land to be cultivated by tenants on yearly basis.

(iii) The letter dated September 30, 1980 clearly falsifies the stand of the petitioners i.e. Late Shri Mange Ram and Shri Ram Mehar, disentitling them, from any equitable relief under Article 226 of the Constitution of India. Even otherwise, if the *Sanad* was executed in their favour in the year 1966 and had not been put in possession thereof, the claim of Late Shri Mange Ram / Shri Ram Mehar for the first time in 2005 i.e. after nearly 30 years, for land in lieu thereof was also highly belated.

(iv) Anyone not given possession of the land in spite of being conferred with the title thereof is expected to act with promptitude. The case of Shri Mange Ram and Shri Ram

Mehar having made representations therefore, from 1967 till 2005 also, is highly suspect and at best also raises disputed question of fact.

(v) The file notings and / or the letter dated August 31, 2005 could not have ignited a claim which was already dead.

(vi) Their claim as displaced persons and which stood satisfied on execution of *Sanad* in the year 1966, had no new right to allotment of any land in the year 2005 and which claim can be agitated by way of this writ petition in the year 2010.

(vii) Even assuming Late Shri Mange Ram and Shri Ram Mehar could not pursue their claim owing to the Repeal Act of the year 2005, the petition filed in the year 2010 i.e. after five years therefrom would also be barred by delay and laches.

(viii) Any officer of the Government, even if makes admission of a claim against the Government and which claim is otherwise barred by law / limitation, thus not valid and cannot bind the Government therewith.

(ix) The learned Single Judge had expressed surprise that the conduct of the officers, who instead of protecting the interest of the State / Government intended to part with valuable land

worth hundreds of crores of rupees, obviously detrimental to public interest and by way of enriching the petitioners.

(x) The principle enshrined in Section 18 of the Limitation Act would have applicability, only if acknowledgement is made prior to expiry of the limitation period.

14. On an examination of the provisions of the Displaced Persons Act and the Rules made thereunder, the learned Single Judge was of the view that the acquisition under Section 12 of the evacuee property is free from all encumbrances. Thus, the lands which were allotted and with respect where to *Sanad* was executed in favour of Late Shri Mange Ram and Shri Ram Mehar, no right or claim of any person with respect thereto persists or survives for Late Shri Mange Ram and Shri Ram Mehar to say that others had made claim as *Bhumidars* with respect to the said lands.

15. He also concluded, the remedy for Late Shri Mange Ram / Shri Ram Mehar, even if were not put in possession of the land in spite of conveyance of title thereof in their favour, cannot be to seek alternate land but only to recover possession of the same land or seek compensation. The appellants cannot after 38 years,

without having annulled the transfer, claim another plot of land in lieu thereof.

16. Mr. Ravi Gupta, learned Senior Counsel appearing for the appellants would submit that despite issuing *Sanad* bearing No. D-914 (Hadbust No.22) allotting the land admeasuring 71 bighas and 5 biswas in Village Jharoda Mazra, Burari, Delhi the physical possession of the complete land could not be handed over to Late Shri Mange Ram and Shri Ram Mehar. Since there were illegal / unauthorized occupants on the same, Late Shri Mange Ram and Shri Ram Mehar had made applications to the respondents requesting, the possession of the land be given to them through police aid, but to no avail.

17. According to Mr. Gupta as the proceedings with regard to land allotted to them in the said village were pending, they were asked to wait till their conclusion. However, even those proceedings were decided in favour of the occupants, who were declared as *Bhumidars* of the said land, as is clear from the proceedings of the Revenue Assistant dated August 29, 1966 and January 09, 1967 (at pages 364 and 318 to the paper book). He referred to the fact that on March 07, 1964, December 18, 1964

and June 22, 1966 the appellants written protest letters to the respondents wherein they had demanded alternate land in lieu of allotted land under *Sanad* bearing No. D-914 dated September 30, 1966.

18. According to him, even thereafter between the years 1973 till 1999, Late Shri Mange Ram and Shri Ram Mehar have been pursuing with the respondents through written communications and through personal meetings for redressal of their grievances. In this regard, he has drawn our attention to page 318 onwards of the paper book, unfortunately, despite following it up for such a long period, the grievances of Late Shri Mange Ram and Shri Ram Mehar could not be answered. He stated that it was only in the year 2004 / 2005 as is clear from the notings in the file as shown to us procured by the appellants through the process of RTI, the respondents / GNCTD initiated the action for allotment of alternate land in lieu of the land allotted vide *Sanad* dated September 30, 1966 and in furtherance thereof had sought information from Tehsildars of various villages i.e. Sheikh Sarai, Haiderpur and Hameerpur etc. about the availability of land to be allotted to Shri Mange Ram and Shri Ram Mehar.

19. According to him, unfortunately, in view of the Repeal Act, no decision could be taken on allotment of alternative land. During the course of his submissions, he conceded to the fact that there was no order of the Lt. Governor in the year 2005, for allotment of land in lieu of land allotted in the year 1966. According to him, Late Shri Mange Ram and Shri Ram Mehar have made their claim to the land, not on the basis of the *Sanad* issued in the year 1966 but in terms of the process initiated by the respondents in the year 2005 acknowledging the fact that possession of the land in terms of the *Sanad* dated September 30, 1966 had not been given to Late Shri Mange Ram and Shri Ram Mehar. He also stated that the Repeal of the Act would not effect the case of the appellants / Shri Mange Ram and Shri Ram Mehar, as the process had been initiated much before the Repeal Act came into effect.

20. He has also drawn our attention to a circular dated September 22, 2008 of the Ministry of Home Affairs, wherein it is clarified that the Repeal Act, 2005 would not effect the disposal of certain cases including unsatisfied verified claims filed under the Displaced Persons Act, in which right has accrued

or has been acquired and which were pending as on September 06, 2005, the date on which the said Act and other related Acts were repealed. According to him, even in terms of the clarification given by the Ministry of Home Affairs, nothing precluded the respondents to consider the claim of Late Shri Mange Ram and Shri Ram Mehar to allot the land in their favour by continuing the process already initiated in the year 2004/2005, as is clear from the note sheets. That apart, he also submitted that even in the year 2010, the Ministry of Home Affairs had issued a notification dated August 19, 2010, whereby the Ministry of Home Affairs has delegated the powers to the officers of the Government of NCT of Delhi under various provisions of the Repeal Act to enable them to dispose of pending outstanding claims. In other words, it is his submission that the Repeal Act had the effect of respondents taking forward all the pending claims under the Displaced Persons Act which included the claims of Shri Mange Ram and Shri Ram Mehar, who admittedly were not given the possession of the land pursuant to the *Sanad* dated September 30, 1966.

21. On the other hand, Mr. Sanjay Poddar, learned Senior

Counsel appearing for the Government of NCT of Delhi would submit that the learned Single Judge has rightly dismissed the petition filed by Late Shri Mange Ram and Shri Ram Mehar as the same was clearly hit by delay and laches. According to him, the petition has been filed with ulterior motives despite Late Shri Mange Ram and Shri Ram Mehar have taken the actual physical possession of the land allotted in terms of *Sanad* dated September 30, 1966 to their complete satisfaction.

22. He has also drawn our attention to pages 171 and 173 of the paper books in support of his submission. That apart, he has drawn our attention to page 176 of the paper book which according to him is a decision of the Managing Officer, Delhi, the Competent Authority under the Act directing the entry of the names of Late Shri Mange Ram and Shri Ram Mehar in the record with regard to 71 bigha and 5 biswas of land, i.e mutating the land in their favour when, no issue was raised by them of not having possession of the land. In fact, it was conceded that the land was allotted and possession thereof is in their possession. He also stated, the handing over of the land is also clear from the proceedings dated July 16, 1962 page 180 of the paper book,

which also depicts the factum of demarcation having been made in the presence of Shri Mange Ram.

23. That apart, he has also drawn our attention to page 182 of the paper book to show that the correction was made in the record whereby the name of third person Mr. Mehar Singh was removed. In the said proceedings, it was clearly recorded that the possession of the land has been handed over to Late Shri Mange Ram and Shri Ram Mehar. He heavily relied upon the proceedings dated September 30, 1966 of Managing Officer / Settlement Officer Jamnagar House, New Delhi which reads as under:

“Shri Manga Ram & Ram Mehar Singh ss/o Prabhu Delhi colonist were allotted 10 St. acres & 10 ½ units of agrl. land equal to 71 bighas 5 biswas comprising of Khasra Nos.21/16 min (3-10), 21/17/1(2-3), 21/17/2(1-22), 21/18(4-14), 21/19(2-17), 21/20(4-14), 21/22(5-9), 21/23(4-16), 21/24(4-16), 24/6 min (0-14), 23/25(4-4), 21/25/1(1-14), 21/25/2(2-2), 22/1/2(2-8), 23/4(4-6), 23/5(4-16), 23/7(4-6), 23/14(4-6), 23/17/2 min (1-0), 23/17/2 min (3-2), & 23/24(3-16) in village Jharoda Mazar Barari on 4.5.61. The satisfaction of their remaining land claim. Possession of the allotted

areas was delivered to them on 8.7.62. No land rent is due from them. In view of the above facts a sanad of permanent allotment be issued in their favour and copy of this order should also be endorsed to the Tehsildar, Delhi for incorporation in the Revenue record.”

24. According to Mr. Sanjay Poddar, on issuance of *Sanad* which has been accepted by Late Shri Mange Ram and Shri Ram Mehar, the issue with regard to the possession of the land stood closed. He submitted that Late Shri Mange Ram and Shri Ram Mehar should have explored other legal avenues to get the occupants removed from the land. In other words, the responsibility of the respondents abates on the issuance of *Sanad*. If Late Shri Mange Ram and Shri Ram Mehar had any issue of occupants being there on the land they should have agitated the same before accepting the *Sanad*. It was his submission that the reliance placed by the appellants on the notings of the department would not confer any right to the appellants as the same are only expression of views by the officers which have not culminated in a decision of the Competent Authority i.e. Lt. Governor, who till date has not passed any order directing the allotment of land to Late Shri Mange Ram and Shri Ram Mehar / appellants. In this

regard he would rely upon the judgment of the Supreme Court in *Delhi Union of Journalists Cooperative House Building Society Limited and Others vs. Union of India and Others*, and one judgment of Madhya Pradesh High Court in *Dolumal Sunderdas vs. State of Madhya Pradesh and Ors. AIR 1971 MP 127*.

25. Having heard the learned counsel for the parties, we are of the view that the learned Single Judge has rightly rejected the writ petition. There is no dispute that the proceedings dated July 08, 1962 and July 16, 1962, records in clear terms that the possession of the land having been taken by Late Shri Mange Ram. The proceedings dated July 16, 1962 also record, a limited correction be made with regard to removing the name of Shri Meher Singh. There is nothing on record to show that Late Shri Mange Ram and Shri Ram Mehar did raise the issue of presence of occupants on the land or complete possession of the land has not been given. Even if, there was an issue that the land was under the illegal occupation, nothing precluded Late Shri Mange Ram and Shri Ram Mehar refusing to accept the *Sanad* issued to them. Even assuming that Late Shri Mange Ram and Shri Ram Mehar had raised the issue of the land under occupation still they

were within their right to seek judicial remedy as available to them at that particular point of time.

26. It was contended by Mr. Ravi Gupta that between the years 1973 till 1999 Late Shri Mange Ram and Shri Ram Mehar were pursuing their grievance with the department, both through written communications and meetings and as such there was delay; we may state here that the department has disputed the receipts of the communications as referred to by Mr. Ravi Gupta during his submissions, still it is a settled law that continuous representations shall not extend the limitation or give fresh cause of action, for the petitioner to file writ petition after almost forty years. We may refer to the latest judgment of the Supreme Court in the case of ***Mahavir and Ors. Vs. Union of India & Ors. 2013 (15) SCC 614***, wherein the Supreme Court has, in paras 12 to 16 held as under:

“12. In the instant case, the case is liable to be dismissed on the ground of delay and laches. By no stretch of the imagination, the principles enumerated in Section 24 of the Act of 2013 can be permitted to invoke. We are not inclined to entertain such a stale claim after 105 years of acquisition.

13. The catena of decisions of this court indicates

that delay and laches are enough to destroy the remedy as laid down by this court in Tamil Nadu Housing Board, Chennai v. M. Meiyappan & Ors. (2010) 14 SCC 309, and Jasveer Singh & Anr. v. State of Uttar Pradesh & Ors. (2017) 6 SCC787.

14. *In U.P. State Jal Nigam & Anr. v. Jaswant Singh & Anr. (2006) 11 SCC 464 this court has observed that in determining whether there has been delay so as to amount to laches in case petitioner/claimant is aware of the violation of the right, where a remedy by his conduct tantamount to waiver of it or where, by his conduct or neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.*

15. *The Constitution Bench of this court in Rabindranath Bose & Ors. v. Union of India & Ors. (1970) 1 SCC 84 has observed:*

“32 ...we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is,

but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.”

(emphasis supplied)

16. This court in *Dharappa v. Bijapur Co-operative Milk Producers Societies Union Ltd.* (2007) 9 SCC 109 considered the question of delay and laches in the matter of raising the dispute under Industrial Dispute Act, 1947. Though no limitation period is prescribed under the Industrial Disputes Act, this court has held that if on account of delay, a dispute has become stale or ceases to exist, the reference should be rejected. It is also held that lapse of time results in losing the remedy and the right as well. The delay would be fatal if it has resulted in material evidence relevant to adjudication being lost or rendered unavailable. When belated claims are considered as stale and non-existing for the purpose of refusing or rejecting a reference under section 10(1)(c) or in spite of no period of limitation is prescribed this court laid that it will be illogical to hold that the amendment to the I.D. Act inserting section 10(4-a) prescribing the time limit of six months should be interpreted as reviving all stale and dead claims. This court has further observed that section 10(4-A) clearly requires that a workman who wants to directly approach the Labour Court, should do so within six months from

the date of communication of the order. This court has laid down that when a new remedy or relief is provided by a statute, such a transitional provision is made to ensure that persons who are given a special right, do not lose it for want of adequate time to enforce it, though they have a cause of action or right as on the date when the new remedy or relief comes into effect. This court has further observed that section 10(4-A) does not, therefore, revive non-existing or stale or dead claims but only ensures that claims which were live, to be filed, by applying the six-month rule in section 10(4-A).”

x

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x

27. We agree with the conclusion of the learned Single Judge, that any person not given possession of the land in spite of being conferred with the title shall act with promptitude to get the possession.

28. That apart the learned Single Judge noted the letter dated September 30, 1980, wherein an admission has been made by the Late Shri Mange Ram that the occupants are the tenants; which means Late Shri Mange Ram and Shri Ram Mehar were in possession of the land. Even if, the occupants on the land had sought declaration of they being *Bhumidars*, it is not understood,

why Late Shri Mange Ram and Shri Ram Mehar, did not seek their impleadment in the proceedings or even challenged the declaration against them in the given facts.

29. There is nothing in the provisions of the Displaced Persons Act, which suggest, if after the issuance of *Sanad* (which signifies, title to the land), a fresh process can start for allotment of alternate land. In this regard, we reproduce para 38 of the impugned judgment wherein the learned Single Judge had held as under:

“38. Even if it were to be believed that though by the Sanad of the year 1966, the land admeasuring 71 bighas and 5 biswas stood transferred to the petitioners but the possession thereof was not delivered by the Government of India to the petitioners, the senior counsel for the petitioners was unable to explain, as to how the same would entitle the petitioners to claim alternative land. The remedy, if any of the petitioners for such a situation was to claim against the Government of India as the transferor to deliver possession and which claim could have been made within the period of limitation provided therefor and/or to have the transfer annulled or to claim back the sale consideration i.e. compensation in lieu of which the land was given to the petitioners. The

*petitioners cannot after 36 years, without having annulled the transfer, claim another plot of land in lieu thereof. Supreme Court, in **Vimal Chand Ghevarchand Jain Vs. Ramakant Eknath Jajoo** (2009) 5 SCC 713 held that right of possession over a property is a facet of title; soon as a deed of sale is registered, the title passes to the vendee; the vendor, in terms of the stipulations made in the deed of sale, is bound to deliver possession of the property sold; if he does not do so, he makes himself liable for damages. Here, not only is there no stipulation in the Sanad that the grantor thereof will deliver vacant, physical possession of the land with respect where to it was executed, to the petitioners but on the contrary the reading thereof shows that the transfer was complete, with the right, title and interest acquired by the Central Government in the property being transferred to the petitioners, thereby also vesting in the petitioners the right to recover possession from whosoever may have been in possession of the land.”*

30. So, the process initiated by the department in the years 2004 / 2005 for the alleged allotment of land in favour of Late Shri Mange Ram and Shri Ram Mehar was without authority of law and in any case the same did not culminate in a decision of the Competent Authority.

31. Mr. Sanjay Poddar is justified in relying upon the judgment of the Supreme Court in *Delhi Union of Journalists Cooperative House Building Society Limited and Others (supra)* wherein in para 7, the Supreme Court has held as under:

“7. In furtherance of the undertaking given by the counsel, Vice- Chairman, DDA considered the representation of the appellants and passed order dated 3.4.2006 whereby he rejected the appellants’ prayer for cancellation of the allotment made in favour of respondent No.4 on the ground that the writ petition and the special leave petition filed by the appellants for quashing the allotment had already been dismissed by the Delhi High Court and the Supreme Court, respectively.”

32. That apart, we also agree with the learned Single Judge, that even the filing of the writ petition in the year 2010, on the basis of happenings in the year 2005, shall also be hit by delay and laches.

33. Even otherwise, much before any decision could be taken by the Competent Authority, the Act stood repealed. Even if clarification has been issued by the Ministry of Home Affairs that the Repeal Act would not effect disposal of unsatisfied verified

claims filed under the Displaced Persons Act in which right has accrued or has been acquired and which are pending as on September 06, 2005, the date on which Acts were repealed, the case in hand in which the *Sanad* has been issued, the clarification shall not be applicable, as it is not a case where unsatisfied claims are said to be pending.

34. That even otherwise, we also agree with the conclusion of the learned Single Judge that the question whether actual physical possession was taken over remains a seriously disputed question of fact which cannot be amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. The relevant para 22 of the impugned order dated November 26, 2015 reads as under:

*22. Supreme Court recently in **State of Assam Vs. Bhaskar Jyoti Sarma** (2015) 5 SCC 321 also observed that “the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under Article 226 of the Constitution of India.Remand to the High Court to have a finding on the question of dispossession, therefore,*

does not appear to us to be a viable solution”.

35. It must be held that the impugned judgment is a well-reasoned judgment, and the same is liable to be upheld. It is ordered accordingly.

36. The appeals are dismissed. No costs.

CM No. 28536/2016 (for direction) in LPA 442/2016
CM No. 47597/2016 (for direction) in LPA 717/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

OCTOBER 22, 2018/aky