

\$~26

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

+ **W.P. (C) 7768/2015**

CHATTER SINGH & ORS

..... Petitioners

Through: Mr. K.C. Mittal and Mr. Siddharth
Jain, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.
Mr. Dev P. Bhardwaj, CGSC with
Mr. Santosh Kr. Pandey, Advocates
for UOI.
Mr. Dhanesh Relan, Standing
Counsel with Ms. Gauri Chaturvedi
and Ms. Mrinalini Sharma, Advocates
for DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

11.12.2018

%

Dr. S. Muralidhar, J.:

1. This is a petition filed by 26 Petitioners seeking the quashing of a notification dated 23rd January 1965 issued under Section 4 of the Land Acquisition Act, 1894 (LAA), a notification dated 6th September 1966 issued under Section 6 of the LAA and the Award dated 12th September 1980 in respect of acquisition of land measuring 25 Bighas 13 Biswas in Khasra No. 513/2 located at Village Kusumpur Pahari, Delhi for public purpose of the planned development of Delhi. The declaration as to the lapse

of the acquisition proceedings is sought in terms of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act').

2. It is stated in the writ petition that the grandfather of the Petitioners had purchased the land in question at Khasra No. 513 and had acquired ownership rights. A copy of the *jamabandi* of the year 1948-49 has been enclosed with the petition in support of this plea.

3. It is also acknowledged that there was a reference under Sections 30 and 31 of the LAA before the Court of the Additional District Judge (ADJ) which came to be finally decided on 31st August 2004. It is then stated that when Shri Surat Singh, the father of some of the Petitioners expired in 2013, they made up their minds to contest and thereafter filed the present petition seeking the above declaration.

4. In response to the notice issued in the petition, the LAC has filed reply in which *inter alia* in para 4 it is stated as under:

“4. That the present writ petition is liable to be dismissed as the petitioners are neither the recorded owner of the subject land falling in khasra number 513/2 (25-13) as the same has been shown as Gair Mumkin Pahar Gram Sabha and the actual vacant physical possession of which was duly taken on 5.11.1980 on the spot by preparing possession proceeding and handed over to the requisition agency. Having an apportionment dispute, the compensation for the same was sent before Reference Court u/s 30-31 of Act, 1894 on 23.1.1989. The writ petition is liable to be dismissed as the petitioners have duly admitted all the above-said facts by disclosing that the father of the petitioner contested the

case before Reference Court which got dismissed on 31.8.2004 and apparently without any challenge thereafter. It is submitted that the said judgment of Reference Court has since attained finality, the writ petition filed by the petitioners is not maintainable.”

5. Even as regards the taking over of the possession, it is averred in para 5 of the counter affidavit as under:

“5. That the present writ petition is liable to be dismissed as the notification u/s 4 of the Act, 1894 was issued on 23.1.1965, followed by Declaration u/s 6 of Act, 1894 on 6.9.66 and Award No. 2181-C/Supp. dated 12.9.1980 for lands in village Kasumpur. The actual vacant physical possession of the subject land was taken on the spot on 5.11.1980 and handed over to the requisition agency on the spot by preparing possession proceeding on the spot. Thus it is submitted that under section 16 of the Act, 1894, the said land vests with the Government absolutely and free from all encumbrances.”

6. As far as the Delhi Development Authority (DDA) (Respondent No. 4) is concerned, a separate counter has been filed. It is contended in para 4 (v) as under:

“4. (v) The present petition is barred by inordinate delay and latches. It is pertinent to mention that with the acquisition having become final under the 1894 Act with respect to the land in question in the manner as mentioned herein below, it is further contended that the reliance as placed by the Petitioner on judgment dated 21.02.2015 bearing WPC No 3103/2014 titled as Sun/I Goel Vs The State & Ors is wrong, misconceived and misplaced and the ratio decidendi as laid down in the said case has got absolutely no application to the facts of the present case.”

7. It is further stated in para 4 (vii) as under:

“4. (vii) Petition is bad for misjoinder of causes of actions as

each of the petitioner is claiming separate chunk of land. Even otherwise not only petitioners admit in the List of Dates-& Events that the possession of the land in question was taken by the answering Respondent as far back as In the year 1980, but petitioners also categorically admit factum of payment of the entire compensation to their predecessor in interest in 2004, and further that the reference with respect to the land in question was decided by the Court of Shri A.K. Pathak the then Ld. ADJ, Delhi on 31.08.2004. Thus on the own admissions made by petitioners petition on the face of record is devoid of any merits.”

8. It is asserted in para 6 of the counter affidavit of the DDA that vacant physical possession of the land has been handed over by DDA by the LAC. Enclosed with the affidavit of the DDA is a document titled “possession proceedings.”

9. The counter affidavit of the DDA was filed on 29th January 2016 and the counter affidavit of the LAC was filed on 25th April 2018. The Petitioners have not filed any rejoinder to contest these above averments.

10. Mr. Mittal learned counsel for the Petitioner states that the Petitioners had filed an application for amendment of the writ petition which was for some reason not moved. When inquired, the Court is informed that the amendment was in respect of the one more khasra No. i.e. khasra No. 543/1 which learned counsel for the LAC informs stood acquired by an Award No. 1901 dated 27th May 1966. Mr. Mittal states that this Court should await the listing of the said amendment application before further proceeding in the matter.

11. The Court finds that one of the issues that arises concerns the delay and laches in filing the present petition. Mr. Mittal submitted that the right of the Petitioners to seek relief arose for the first time under the 2013 Act. According to him since Section 24 (2) permits a person whose lands have been acquired to seek a declaration of lapsing of the land acquisition proceedings which are over five years old, it did not matter that the declaration was being sought in respect of even a fifty-year old Award.

12. The Court is unable to agree with the above submission. No doubt Section 24 (2) of the 2013 Act permits the lapsing of land acquisition proceedings in respect of an Award that has been passed more than five years earlier to the 2013 Act coming into force and in respect of which land compensation has not been paid or actual physical possession not taken. Nevertheless Section 24 (2) of the 2013 Act does not obviate the need for a person seeking relief thereunder to approach the writ Court in reasonable time for relief. Merely, because Section 24 (2) of the 2013 Act itself does not stipulate an outer time limit within which relief has to be sought thereunder, does not mean that a writ petition seeking a declaration thereunder can be filed in respect of a more than five-year old Award at any time without having to explain in what manner the petitioner was pursuing his or her remedies in the meanwhile.

13. The remedy under Article 226 of the Constitution is a discretionary one. While there is no period of limitation for filing a writ petition, it is well settled that even a writ petition has to be filed within a reasonable time. If a person approaches the Court later than say three years than when the cause

of action to seek relief arose, such Petitioner is obliged to explain satisfactorily why there was a delay of three years or more in approaching the writ court. The law in this regard in the context of writ proceedings under Article 226 of the Constitution is fairly well settled. In ***Tamil Nadu Housing Board, Chennai v. M. Meiyappan (2010) 14 SCC 309*** the Supreme Court reversed the judgments of the Single Judge and Division Bench of the High Court of Madras in quashing was examining

“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.

14. This was reiterated by the Supreme Court in ***Mahavir v. Union of India*** in the following words:

“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.

20. In our opinion, the cases in which there is deliberate action 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.

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.”

15. The present petition seeks relief in respect of an Award passed way back on 12th September 1980 and in respect of which the reference was made to the Court of the learned ADJ. That reference was also decided on 31st August 2004 at least eleven years prior to the filing of the present petition. Except stating that the Petitioner decided to contest the matter after the death of Shri Surat Singh in 2014, there is no explanation whatsoever offered for the Petitioners having waited for thirty-five years to challenge the land acquisition Award. Therefore, the Court is not at all satisfied with the explanation offered for the delay in approaching the Court.

16. Even on merits the Court finds that the Petitioners have not been able to place on record any credible document to show that they are in fact the recorded owners of the land in khasra No. 513/2 in respect of which the present petition has been filed. The averment of the LAC that in the revenue record has been shown as “Gair Mumkin Pahar Gram Sabha” has not been able to be contested by Petitioner.

17. While on the aspect of physical possession, Mr. Mittal joins issue and asserts that till date the Petitioners continue to remain in possession of the land in question, the Court is unable to grant the relief sought by the Petitioners without their being able to convincingly establish that they are in fact the recorded owners or have an interest in the land in question which is capable of being compensated under the LAA. In any event, as already observed, the petition is barred by laches since the Petitioners have failed to offer any reasonable explanation for the inordinate delay in approaching the Court.

18. The fact that an unnumbered amendment application may be pending is also to no avail since that seeks to raise a challenge to an even older Award of 1966, which challenge would obviously be barred by laches.

19. For the aforementioned reasons, the writ petition is dismissed both on merits and on the ground of laches.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 11, 2018

nk