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

+ **W.P.(C) 53/2018**

SHRI GHANSHYAM DASS AND ORS Petitioners

Through: Mr. Rajesh Yadav & Ms. Ruchira,
Advocates with Petitioners No.1 & 6

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Through: Mr. Rajneesh Sharma, Advocate for
Respondents No.1 & 2
Mr. Siddharth Panda, Advocate for
Respondent/LAC/L & B
Ms. Aakanksha Kaul, Advocate for
Respondent/DDA

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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30.04.2019

Dr. S. Muralidhar, J.:

1. The prayer in the present petition reads as under:

“(a) issue an appropriate writ, order or directions, thereby declaring the entire acquisition proceedings in respect of the land of Petitioners comprised in Khasra Nos.394/324/325/36 (1-16), 395/326/327/40 (2-10) & 267 (0-19), totally measuring 5 Bighas and 5 Biswas, situated in the revenue estate of Village Said-UI-Ajaib, Tehsil Mehrauli (now Hauz Khas), New Delhi, initiated vide notification dated 13.11.1959, bearing No.F.15(111)/59-LSG, issued under Section 4 of the L.A. Act; the notification/declaration dated 10.11.1966, bearing No.F.4(2)/62-L&H, issued under Section 6 of the Land Acquisition Act, 1894; and the award No. 149/86-87 made on 17.09.1986 and all subsequent proceedings, 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, with respect to the said land of the Petitioners.”

2. While issuing notice in the present petition on 5th January, 2018 this Court passed an interim order directing parties to maintain status-quo with regard to title, nature and possession and construction on the subject land. This interim order was made absolute subsequently on 4th April, 2018.

3. The Petitioners, who are six in number, state that the land in question came to be devolved upon them as the sons and male lineal descendants of late Shri Parmanand under Section 50 of the Delhi Land Reforms Act, 1954 (DLRA). According to them, their father was the registered owner of the land and they themselves are recorded Bhumidars of the land except land in Khasra No. 267 (0-19). They refer to an order dated 4th July, 2009 passed by the Tehsildar, Hauz Khas, mutating land measuring 39 bighas and 14 biswas (out of the total land 41 bighas and 17 biswas) in their favour. The *khatauni* giving effect to the order of mutation and the *Khasra Girdawari* have been placed on record as Annexures P-4 and P-5 respectively.

4. In para 9 of the petition, it is stated that the lands of the Petitioners are under encroachment and proceedings for ejectment are pending under Section 84 of the DLRA, 1954. It is further stated that certain residents of Village Said-Ul-Ajaib, termed by the Petitioners as ‘illegal and unauthorised occupants’, filed an appeal being Case No.26/2009 under Section 64(1)(b) of the DLRA challenging the order dated 4th July, 2009 mutating the land in favour of the Petitioners. The said appeal was dismissed on 21st March, 2011. An appeal was then filed by the aggrieved persons

before the Financial Commissioner and dismissed by him on 27th March, 2012. Writ Petition (C) No. 4289/2012 and 3486/2013 challenging the said order were dismissed by the learned Single Judge on 7th November, 2016. The further LPA Nos. 42/2017 and 140/2017 were dismissed by the Division Bench on 25th October, 2017.

5. In para 11 it is stated that the land in question “became part of an unauthorised colony named 'Anupam Gardens.' However, the Petitioners contend that in terms of the revenue records maintained under the DLRA, the lands in question are still agricultural lands governed by the DLRA.

6. In para 12 of the writ petition, it is averred that the suits filed by the predecessor-in-interest of the Petitioners was dismissed by the SDM/RA on the wrong premise that the lands were acquired. The said order dated 20th March, 2004 has been challenged by the Petitioners before the Deputy Collector “inasmuch as the land was not under acquisition.” Copies of judgments negating the challenge to the sale deed dated 15th September, 1980 in favour of the father of the Petitioners has also been placed on record.

7. The Petitioners state that in respect of the acquisition of the lands in question a notification was issued on 13th November, 1959 under Section 4 of the Land Acquisition Act, 1894 (LAA) followed by declaration under Section 6 of the LAA on 10th November, 1966. It is pointed out that Khasra No. 395/326-327/40 was not included in the declaration under Section 6 of the LAA. It is then stated that Award No. 149/1986-1987 was passed by the

Land Acquisition Collector (LAC) on 17th September, 1986.

8. The Petitioners assert that the Repspondents have not taken physical possession of the land including land in Khasra No. 267. They state that on 3rd November, 2014 Petitioner No.6 submitted an application under the RTI Act to the LAC in reply of which it is stated that Khasra Nos. 71, 96, 100, 105, 106, 123, 137, 139 and 172 have been acquired under the Award No.13/1987-1988 and Khasra Nos. 395/326-327/40 were acquired in terms of the declaration dated 10th November, 1966 under Section 6 of the LAA. As regards Khasra No. 267 the land records were in a 'poor condition' and therefore the position could not be clarified. The Statement A details concerning payment of compensation were also provided in respect of the Award No. 13/1987-88.

9. According to the Petitioners, by an order dated 9th March, 1989 in CWP Nos. 2567-2568/1987 this Court had quashed the declaration under Section 6 of the LAA. The further appeals by the DDA were dismissed by the Supreme Court on 20th September, 1991 in ***Delhi Development Authority v. Sudan Singh***. It is stated that despite the above, the LAC was still treating the said land under acquisition and claims to have deposited compensation on 20th December, 2013 in the Court of the Additional District Judge (ADJ), which cannot be regarded as the compensation having been paid to the Petitioners. It is in the above circumstances that the above reliefs are being sought by the Petitioner.

10. A counter affidavit has been filed by the DDA pointing out *inter-alia*

that the petition is barred by delay and laches. It is pointed out that possession of the land in Khasra No. 267 (0-19) was taken on 23rd September, 1986 and then placed at the disposal of the DDA by a notification dated 24th October, 1986 under Section 22 (1) of the Delhi Development Act, 1957. It is stated that the disputed question of fact whether the Petitioners are entitled to the reliefs in respect of the remaining lands particularly in view of the interim orders passed in the various writ petitions.

11. In a rejoinder to the counter affidavit of the DDA, the Petitioners reiterate the contentions that “possession is with unauthorised occupants against whom the ejectment proceedings are pending” under the DLRA.

12. A separate counter affidavit has been filed by the Additional District Magistrate (ADM) (South West). It is stated that in paras 6 and 7 as under:

“6. That Khasra No 71 (5-17), 96 (2-13), 100 (0-18), 105 (1-6), 116 (2-0), 123 (1-15), 137 (7-3), 139 (10-4), 172 (1-4) village Saidulajaib was acquired vide award no. 13/87-88 and possession land Khasra nos. 71 (5-17), 96 (2-13), 116 (2-0), 123(1-15), 137 (7-3), 139 (10-4), 172 (1-4) has been taken on 17.07.1987 and Khasra No. 100 (0-18), 105 (1-6) has not been taken . As per Statement Aof Award No. 13/87-88 the amount of compensation i.e. Rs. 1291408.44 has been sent to the court of Ld. ADJ vide cheque no. 456945 dated 20.12.2013. As per the records Sh. Chhuttan son of Sh. Kewal is the recorded owner of the land.

7. The land comprised in Khasra No. 394/324/325/36 (1-6), 395/326/327/40 (2-10) of Village Saidulajaib has not been acquired as per LR. Register and Khasra No. 267 (0-19) has been acquired vide Award No. 149/86-87 and Possession of

the land taken on 23.09.1986. As per Statement A of Award No. 149/86-87, the amount of compensation i.e. Rs. 16971.33 has been sent to the court of Ld. ADJ on 07.01.1988 and Sh. Chuttan son of Sh. Kewal is the recorded owner of the land.”

13. A rejoinder has been filed to the counter affidavit of the ADM. It is sought to be contended that the present writ petition has been filed in respect of the land comprised in Khasra Nos. 394/324/325/36 (1-16) and 395/326/327/40 (2-10) and from the reply filed by the LAC it is claimed that the said land has not been acquired. As regards land in Khasra No.267 the RTI reply dated 1st December, 2014 of the SDM is referred to where it is stated that the land records being in poor condition, the same cannot be verified.

14. The Petitioner’s contend that neither was compensation amount tendered by the LAC nor refused by the Petitioners in respect of the lands in question. Therefore, they contend that are entitled to the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act').

15. It must be added here that during the course of arguments Mr. Rajesh Yadav, learned counsel appearing for the Petitioners stated that they are prepared to give up their claim in respect of the land in Khasra No. 267 since there is a doubt whether it formed part of the land acquisition proceedings.

16. The above submissions have been considered by this Court. The pleadings present a confusing picture as regards the exact case of the

Petitioners. On the one hand they seek a declaration under Section 24 (2) of the 2013 Act on the basis that the lands in question are covered by Awards passed under the LAA. On the other, they appear to contend that they are not in which case the question of granting relief under Section 24 (2) of the 2013 Act does not arise. The Respondents are, however, categorical that the lands do stand acquired under the Awards mentioned in their respective counter affidavits.

17. The result is that from the pleadings of the parties, it is plain that the question whether the Petitioners are entitled to compensation is a disputed question which obviously cannot be gone into the present petition. The Petitioners do not dispute the fact that the possession of the land in question is not with them.

18. The Petitioners also have no explanation to offer for the inordinate delay in approaching the Court for relief. There is a huge gap in the petition in the narration of events between the date of the Award i.e. 17th September, 1986 and Petitioner No.6 filing an application on 3rd November, 2014 under the RTI Act seeking information in relation of the lands in question. The unexplained delay is fatal to the claims of the Petitioners of compensation in terms of law explained in the judgment of the three Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* (2018) 3 **SCC 412** where it was observed as under:

“128. In our considered opinion section 24 cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement

of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of section 24(2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as res judicata or constructive res judicata. As either the plea raised is negatived or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

129. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negatived, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of

section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in *Pune Municipal Corporation (supra)*, and this Court never, even for a moment, intended that such cases would be received or entertained by the courts.”

19. It may be noted here that the reference made by a Constitution Bench in *Indore Development Authority v. Shyam Verma (2018) 4 SCC 405* regarding the correctness of the aforesaid decision in *Indore Development Authority v. Shailendra (supra)* is only as regards the extent to which it differs from the earlier view of the Supreme Court in *Pune Municipal Corporation v. Harakchand Misrimal Solanki (supra)* regarding the tendering of compensation, and on certain other issues but not on the question of petitions seeking declaration under Section 24 (2) of the 2013 Act being barred by laches. This legal position was explained by this Court recently in *Mool Chand v. Union of India 2019 (173) DRJ 595 DB*.

20. Apart from the above difficulties in the way of the Petitioners, the fact remains that the lands in question form part of an unauthorised colony is confirmed by the Petitioners who have made a categorical averment to that effect in para 11 of the petition. The Petitioners state that the structures on the lands in question form part of an unauthorised colony named ‘Anupam Gardens’. Indeed, the said colony figures at Sl.No. 485 and Regn No. 519 in the list of unauthorised colonies awaiting registration put up on website of the L & B Department of the Govt. of NCT of Delhi.

21. In relation to the lands in unauthorised this Court has consistently taken the view that no relief under Section 24(2) of the 2013 Act can be granted.

In *Mool Chand v. Union of India* (*supra*), this Court held:

“48. The third aspect of the case is that the Petitioner admits that the land in question is part of an unauthorised colony. The very basis for seeking regularisation of an unauthorised colony is that it is located on land which belongs either to the public or to some other private parties. The Petitioners would therefore not have the *locus standi* to seek a declaration in terms of Section 24 (2) of the 2013 Act in such cases since the very fact that they have sought regularisation on the basis that they are in unauthorised colony would be an admission that they do not otherwise have any valid right, title or interest in the land in question.

49. This Court has by order dated 19th December 2018 in WP(C) No.190/2016 (*Harbhagwan Batra v. Govt. Of NCT of Delhi*) and order dated 8th January 2019 in WP(C) No.10201/2015 (*Gurmeet Singh Grewal v. Union of India*) negatived similar pleas by the Petitioners who were trying to seek similar declaration of lapsing even while admitting that they were pursuing regularisation of an unauthorised colony.

50. In a decision dated 10th January 2019 in W.P. (C) 3623 of 2018 (*Akhil Sibal v. Govt. of NCT of Delhi*) this Court observed in this context as under:

“18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting regularization orders. A large portion of these colonies are by way of encroachment on public land, some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premise on which such regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those

structures. That very basis gets contradicted as some of them try to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable.”

22. This has further been reiterated in the decision dated 25th January, 2019 in WP(C) No. 3438/2015 (*Krishna Devi v. Union of India*).

23. For the aforementioned reasons, none of the reliefs as prayed for can be granted. The petition is accordingly dismissed.

24. The interim order passed on 5th January, 2018 which stood confirmed dated 4th April, 2018 is hereby vacated.

S.MURALIDHAR, J.

I.S.MEHTA, J.

APRIL 30, 2019

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