

\$~44

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

+ **W.P.(C) 360/2017**

ATTAR SINGH KHATRI & ORS.

..... Petitioners

Through: Mr.Kunal Sachdeva with Mr.Anoop
Kumar and Ms.Garima Sharma,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Advocate for
LAC/L&B.
Mr.R.Krishnaamorthi, Advocate for
DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

02.08.2019

CM APPL. 34730/2019

1. This is an application by the Petitioners pointing out to one clerical/typographical error in para 7 of the Court's order dated 4th July 2019 as corrected by the order dated 19th July 2019.
2. According to the Petitioners their land which is Khasra No. 75/9 (2-9) is not part of the lands for which compensation was paid as per the payment certificate (Annexure R-2 to the rejoinder).
3. The corrected order dated 4th July 2019 will accordingly read thus:

“5

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 360/2017

ATTAR SINGH KHATRI & ORS.

..... Petitioners

Through: Mr. Mohit Chaudhary,
Mr. Anmol Kumar
and Ms. Garima
Sharma, Advocates

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. R.Krishnamoorthy
for DDA, Mr. Yeeshu
Jain, Standing Counsel
or L&B/LAC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

04.07.2019

1. The prayers in the petition read as under:

“A. Issue writ of mandamus commanding the respondents that as the impugned acquisition proceedings pertaining to Khasra no. 75/9 (2 bigah and 9 biswa) in the Revenue Estate, Village Narela, Delhi, have lapsed in accordance with section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Respondents shall not interfere with the nature, title or possession with the property of the Petitioners;

B. issue writ of certiorari thereby quashing notification dated 30.10.1963 notification no. F-1(43)/63- L & H under section 4 of the Land Acquisition Act 1894 issued by the respondents with respect to the land of the Petitioners being Khasra no. 75/9 (2 bigah and 9 biswa) in the Revenue Estate, Village Narela, Delhi;

C. Issue writ of Certiorari thereby quashing declaration dated

16.01.1969 under section 6 of the Land Acquisition Act, 1894 made by the respondents with respect to the land of the Petitioners being Khasra no. 75/9 (2 bigah and 9 biswa) in the Revenue Estate, Village Narela, Delhi;

D. Issue writ of mandamus commanding the respondents and their officers restraining them from interfering and/or disturbing the peaceful possession of the petitioners over land of the Petitioners being Khasra no. 75/9 (2 bigah and 9 biswa) in the Revenue Estate, Village Narela, Delhi.”

2. The Petitioners state that they are the legal representatives of the recorded owners of land bearing Khasra no. 75/9 (2 Bigha and 9 Biswa) in the Revenue Estate, Village Narela, Delhi.

3. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 3rd October 1963, followed by declaration under Section 6 of the LAA on 16th January 1969. The impugned Award No. 243/86-87 was passed on 23rd September 1986.

4. It is stated that a writ petition CWP 1711/1983 was filed before this Court by the Petitioners along with others challenging the aforementioned notifications under Sections 4 and 6 of the LAA. By order dated 21st September 1983 this Court stayed the dispossession of the Petitioners. It is stated in Para 7 of the petition that after the Award was passed on 23rd September 1986, the Collector took possession of the area covered under the Award. However, possession of the land of the Petitioners was not taken in view of the stay order passed by this Court. CWP No. 1711/83 was subsequently dismissed by this Court on 8th May 1997.

5. It is asserted that with the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘the 2013 Act’), and with actual physical possession of the lands in question remaining with the Petitioners, they are entitled to a declaration of deemed lapsing of land acquisition proceedings under Section 24 (2)

thereof.

6. In the counter-affidavit filed on behalf of the LAC, it is submitted that the possession of Khasra No.75/9(2-9) was taken and handed over to the DDA on 23rd September 1986. On the aspect of compensation it is stated that “the records are in extremely torn condition and it is appearing that there is some stay on 75/9(2-9). Hence, the status of payment of compensation could not be ascertained clearly.” It is further submitted that title documents in respect of subject land i.e., Khasra No.75/9 (2 - 9) in the name of Shri Molar, Hukum Chand and Shri Chander Bhan have not been produced.

7. In the Rejoinder filed by the Petitioners to the counter affidavit of LAC, the averments in the petition are reiterated. The Petitioners have enclosed a certificate issued by LAC (Narela) as Annexure-R2 which states that an amount of Rs.5,81,903/- has been paid to Shri Molar in respect of several lands as his 1/3rd share which, according to the Petitioners does not include land bearing Khasra No. 75/9 (2-9). The Petitioners are claiming through Shri Molar, Shri Hukum Chand and Shri Balwan Singh. It is further stated by the Petitioners that the Respondents only took symbolic possession and physical possession of the subject lands still remains with the Petitioners.

8. In view of the above pleadings, the assertion by the Petitioners that they continue to remain in actual physical possession of the land in question, gives rise to a disputed question of fact which cannot be examined in this petition. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief. What is urged by learned counsel for the Petitioners is that the Petitioners got a right to challenge the land acquisition proceedings afresh with the passing of the 2013 Act with effect from 1st January 2014 and therefore, the petition cannot be said to be barred by laches. It is, however, not denied that the Petitioners did not succeed in their earlier challenge to the land acquisition proceedings.

9. It is the settled legal position that a person seeking discretionary

relief under Article 226 of the Constitution has to do so within a reasonable time. In the present case the earlier challenge by these Petitioners to the land acquisition proceedings ended with the dismissal of their writ petition by this Court on 8th May 1997. That order was not challenged further and has attained finality. In such circumstances, the Petitioners cannot possibly contend that Section 24 (2) of the 2013 Act gives them a fresh cause of action to challenge the land acquisition proceedings again. The legal position has been explained in the judgment of the three Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 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 negated 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/negated, neither do they revive those rights which have become 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.”

10. 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***.

11. For the aforementioned reasons, the writ petition is dismissed but in the circumstances with no orders as to costs. The interim order dated 16th January 2017 which stood confirmed on 1st November 2017 hereby stands vacated.”

4. The application is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 02, 2019 / tr