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

+ **W.P.(C) 456/2018 & CM Appl No. 44400/18**

RK YADAV

..... Petitioner

Through: Mr. Satish Tamta, Sr. Advocate with Mr
Shariq Iqbal and Ms Nusrat Geelani,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjeev Uniyal with Mr Dhawal
Uniyal, Advocates for R-1/UOI.
Mr. KB Hira, Advocate for the Applicant

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA

ORDER
02.04.2019

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1. The prayers in the present petition read as under:

“a) pass a writ, order or direction in the nature of a writ of declaration thereby declaring the acquisition proceedings initiated in respect of the land of petitioner comprising in khasra number 23/3 and 23/13 ad measuring 760 Sq Yds falling in the revenue estate of village Jwalaheri, Paschim Vihar, New Delhi-110063 bearing No. NG-26, as deemed 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, and quash the acquisition proceedings;

b) Pass a writ, order or direction in the nature of a writ of mandamus thereby directing the Respondents not to interfere with the peaceful possession and enjoyment of the land of the Petitioner comprising in khasra number 23/3 and 23/13 ad-measuring 760 Sq Yds falling in the revenue estate of village Jwalaheri, Paschim Vihar, New Delhi-110063 bearing No. NG-26, and c) pass any other order or direction as deems fit to this Court;”

2. The background facts are that the land in question, as mentioned in the prayer, located in Village Jwalaheri, Paschim Vihar was notified under Section 4 of the Land Acquisition Act (LAA), 1894 on 13th November 1959 followed by declaration under Section 6 LAA on 8th April 1963. The impugned Award was passed in 1968. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the narration in the petition, it is mentioned that the said property was purchased by the father of the Petitioner, late Shri Nathu Ram, by a registered sale deed dated 28th December 1960. It is stated that despite the impugned Award being passed in 1968, till the date of filing of the present petition, neither was possession taken nor was compensation paid. It is stated that in 1978, an oral family partition was effected between the Petitioner and his siblings, and the land admeasuring 760 sq. yards, later registered as NG-26, fell in the share of the Petitioner, and has since been mutated and assigned as NG-26 by the House Tax Department of the Municipal Corporation of Delhi for the purpose of collecting house tax which the Petitioner has been paying since 2004.

4. It is further mentioned that despite various complaints having been made with the DDA and the SDM/Tehsildar regarding the subject land and its usage, the same have been investigated and rejected. It is submitted that by letter dated 16th December 2011, the Petitioner informed the DDA and SDM/ Tehsildar regarding the entire facts about the building, pursuant to which the Delhi Police also conducted its inquiry and the IO recommended no further action in the subsequent report. It is stated that the above facts came to the knowledge of the Petitioner by a reply to his Right to Information (RTI) application dated 9th April 2012. Furthermore, a 'Restrain Order' issued by the SDM, Chairman (Special Task Force), Sub-Division Punjabi Bagh dated 7th December 2011 on account of a complaint against 'installation of mobile tower on the building

without any permission from the competent authority' was withdrawn by order dated 15th December 2011 when the Petitioner presented the 'relevant documents of land and house tax etc. to the SDM.' It is further stated that the Petitioner has sold certain areas of the subject land to various persons for which the corresponding sale deeds have been annexed with the petition. It is submitted that by reply to an RTI application dated 23rd April 2012, the MCD stated that property tax with respect to the property in question is being assessed since 1983. The petition then refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5. Thereafter, in para 32 of the petition, it is stated that

“It is also submission of the petitioner that the property also forms part of the urbanized village (abadi area) and 1071 unauthorized colony and the same is considered for regularization. Thus, the land of the petitioners also protected under the National Capital Territory of Delhi laws (special provisions) second (Amendment) act 2014. The new amendment bill of 2017 passed by the Lok Sabha has received the assent of the President, wherein the village abadi area (including urbanized villages) have been exempted from any intervention be it unauthorized constructions/ encroachments, by the State Authorities including DDA till the Master Plan for Delhi, 2021 is finalized by the Government.”

6. No counter affidavit has been filed on behalf of the Respondents. However, as seen above, the narration in the petition itself reveals that the land in question claimed by the Petitioner forms part of an unauthorized colony. In respect of the lands that form part of unauthorized colony this Court has taken the consistent view that no relief under Section 24(2) of the 2013 Act can be granted. The legal position has been explained in *Mool Chand v. Union of India 2019 (173) DRJ 595 DB* as under:

“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.”

7. The above decision has been followed and the legal position has been reiterated by this Court in an order dated 25th January, 2019 in W.P.(C) No.3438/2015 (***Krishna Devi v. Union of India***).

8. The fact further remains that the Petitioners have no explanation to offer for

the inordinate delay in approaching the Court for the relief, with respect to an Award that was passed in 1968. On the aspect of laches, in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 the Supreme Court has 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 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.”

9. As clarified in *Krishna Devi v. Union of India (supra)*, the dismissal of the present petition will not come in the way of the Petitioner pursuing the claim for regularisation of the unauthorised colony in question.

10. Consequently, for the aforementioned reasons, the writ petition is dismissed both on the ground of laches as well as on merits, but in the circumstances, with no orders as to costs. The pending application is also dismissed.

11. The interim order dated 17th January 2018 as confirmed on 12th April 2018 is hereby vacated.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 02, 2019
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