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

+ **W.P.(C) 233/2015**

AZHER NISAR SHERWANI

..... Petitioner

Through: Mr. N.S, Vasisht, Mr. M.P. Bhargava,
Advocate

versus

UNION OF INDIA& ORS.

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel and Ms.
Jyoti Tyagi for L&B/LAC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

11.02.2019

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1. The prayers in the petition read as under:

“(i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to the said land of the Petitioner having lapsed and further quashing the impugned notification No.F.9(16)/80/L&B dated 25.11.1980 issued under Section 4,notification No. F.9(26)/85/ L&B dated 07.06.1985 issued under Section 6 of the Old Act and the award No. 14/87-88with respect to 2 Bighas of land of the Petitioner' comprised in Khasra No. 769/596 (1-0) & 760/596 (1-0), situated in revenue Estate of Village Maidan Garhi, Tehsil Mehrauli,NCT of Delhi.

AND

(ii) issue a writ of mandamus and/or any other writ, order and direction of the similar nature issuing directions to the Respondents not to disturb or hinder the possession and enjoyment of the Petitioner over 2 Bighas of land of the Petitioner' comprised in Khasra Nos. 760/596 (1-0) &760/596 (1-0), situated in revenue

Estate of Village Maidan Garhi, Tehsil Mehrauli, NCT of Delhi.

iii) pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice

Acquisition (Rehabilitation and Resettlement) Act 2013 and awarding compensation in terms thereof;"

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 25th November 1980, followed by declaration under Section 6 of the LAA on 7th June 1985. The impugned Award No. 14/1987-88 was passed on 17th June 1987. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the counter-affidavit filed on behalf of the LAC, it is submitted that the possession of Khasra No. 759/596(1-00) & 760/596(1-00) was taken on 16th July 1987. It is also submitted that the Petitioner has not filed any revenue nor any title documents to support the contention that the Petitioners or their predecessors-in-interest were ever the recorded owners of the land. On the aspect of compensation, it is submitted in Para 4 of the counter-affidavit that:

"the compensation for the Khasra No. 760/596 (2-0) was duly paid to its recorded owner namely Sh. Ram Phal as per his 3/4th Share and 1/4th Share of the same in respect of Smt. Rishalo has been sent in RD. It is further submitted that the reference under section 18 of the Land Acquisition Act, 1894 was also sent to the Reference Court for the said 3/4th share of Ram Phal. It is submitted that as per the Ordinance 2014, the compensation has been duly lying deposited in the account specifically maintained for the purpose of disbursement of compensation to the recorded owners thus the acquisition proceedings would not lapse on account of non-payment of compensation to the petitioners."

4. In the counter-affidavit filed by the DDA, it is submitted that the petition is

barred by delay and laches. It is further submitted that as per the land records, the land bearing Khasra No.759/596(1-00) &760/596(1-00) was acquired for public purpose for the “planned development of Delhi”. The physical possession of this land was handed over to the DDA by LAC on 16th July 1987. It is submitted that the compensation was received by the original owner Sh. Ramphal which was remitted back to the LAC, however, the Petitioner has not disclosed the particular details of the writ petition filed by the Petitioner or his predecessor directing refund of compensation.

5. No rejoinder has been filed to the counter-affidavit of the DDA. The Rejoinder filed by the Petitioner to the counter affidavit of LAC merely reiterates the averments in the petition. On the aspect of compensation, the Petitioner claims that they have not received any compensation. In the rejoinder the Petitioner has mentioned: “With regards, the compensation amount, the Petitioner has no knowledge of the same. It is submitted no notice under Section 9, 10 and/or 12 of the old Act was issued to the Petitioner.”

6. In any event, the assertion by the Petitioners that they continue to remain in possession of the land in question and that no compensation was tendered gives rise to disputed questions of fact which cannot possibly 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.

7. On the aspect of laches, in *Mahavir v. Union of India (2018) 3 SCC 588* the Supreme Court has observed as under:

“23. 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.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.”

8. The above decision has been re-affirmed by the judgment of a 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/negated, 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. The above observations have been followed by this Court in several orders including the order dated 17th January, 2019 in WP(C) No. 4528/2015 (***Mool Chand v. Union of India***) and similar petitions have been dismissed on the ground of laches.

10. 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.

11. The interim order passed by this court on 12th January 2015 which stood confirmed on 2nd November 2017 stands vacated.

S.MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 11, 2019

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