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

+ **W.P. (C) 7329/2019**

NEERAJ KUMAR SHARMA AND ORS. Petitioners
Through: Mr. R.L. Kohli, Advocate

versus

UNION OF INDIA AND ORS. Respondents
Through: Siddharth Khatana, Sr.Panel
Counsel for Respondent No. 1/Union of
India
Mr. Abhinav Sharma, Advocate for
Respondent No. 2
Mr. Yeeshu Jain with Ms. Jyoti Tyagi,
Advocates for LAC/L&B

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

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ORDER
12.07.2019

CM APPL. 30524/2019 (exemption)

1. Allowed, subject to all just exceptions.

W.P. (C) 7329/2019 and CM APPL. 30523/2019 (stay)

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

“It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to set-aside the acquisition of the subject land measuring 2 Bigha 10 Biswas comprised in Khasra No. 2791/1124-1125/1 village Mehrauli, Delhi”

3. At the outset, it must be mentioned that the Petitioners had filed a writ petition being W.P.(C) 10218/2017 seeking the aforesaid relief. This Court, by order dated 25th April, 2019 dismissed the said petition as withdrawn with liberty to file a fresh petition giving proper explanation for the inordinate delay in approaching the Court for relief. Pursuant to the aforesaid order, the Petitioners have filed the present petition.

4. The background facts are that the land in question i.e. 2 *Bighas* 10 *Biswas* in Khasra No. 2791/1124-1125/1 in Village Mehrauli (hereinafter, 'subject land') was notified under Section 4 of the Land Acquisition Act, 1894 ('LAA') on 24th October, 1961 for the public purpose of planned development of Delhi. This was followed by a declaration under Section 6 of the Act on 4th January, 1969. The Land Acquisition Collector ('LAC') passed an award being Award No. 6/1973-74 on 31st May, 1973.

5. As far as the Petitioner is concerned, it is stated that the Petitioners are the heirs of one Shri Surender Sharma, who along with his brother Shri Devender Sharma, owned 6 *Bighas* of land. It is stated that the Petitioners are the owners of 2 *Bighas* 10 *Biswas* out of the aforesaid 6 *Bighas*. It is also stated that out of the said 6 *Bighas*, Shri Devender Sharma sold 3 *Bighas* to one Smt. Urossa Parveen by a sale deed dated 9th September, 1969.

6. It is stated that Smt. Urossa Parveen had filed a writ petition [W.P.(C) 132/1984], praying for the release of 3 *Bighas* 10 *Biswas* but had not impleaded the Petitioners as parties to the said writ petition. It is averred

by the Petitioners that it was only upon perusing the judgment of the Court dated 4th October, 2002 in the said writ petition that the Petitioners became aware that possession of 3 *Bighas* 10 *Biswas* of the subject land had not been taken. It is also averred that the delay in challenging the impugned award was because the Petitioners did not have “knowledge of the steps taken by Smt. Uroossa Parveen”. It is contended by the Petitioners that possession of the subject land has not been taken and that neither have the Petitioners nor their father or Shri Devender Sharma been paid any compensation. The Petitioners, therefore, aver that they are entitled to a declaration of deemed lapsing under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 (‘2013 Act’).

7. The fact remains that despite being granted liberty to withdraw and file a fresh petition, explaining the inordinate delay in approaching this Court for relief, the Petitioners have not advanced a sufficient explanation in the present petition. There is a huge gap in the narration between the date of the Award i.e. 31st May 1973 and 4th October 2002 when W.P. (C) 132 of 1984 was decided and again between the 4th October 2002 and 2017 when the earlier writ petition was filed. The mere fact that the 2013 Act became effective from 1st January 2014 would not give rise to a fresh cause of action particularly since even on the Petitioners’ own showing they were aware of the dismissal of the earlier writ petition in 2002 challenging these very acquisition proceedings.

8. 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.”

9. The above decision was reaffirmed by 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 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 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.”

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.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 12, 2019
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