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

+ **W.P.(C) 1421/2018 & CM APPL. 7667/2019**

SURINDER KAUSHIK

..... Petitioner

Through: Mr.Vishwa Ranjan Kumar, Advocate.

versus

GOVT. OF N.C.T. OF DELHI AND ORS.

..... Respondents

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

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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27.02.2019

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

“a) issue a writ, order or declaration declaring that the entire acquisition proceedings i.e. Section 4 notification dated 21.3.2003, Section 6 declaration dated 18.3.2004 and the award no.01/DC/W-05-06 dated 22.8.2005 in respect of the land of the petitioner admeasuring 1 Bigha 10 Biswa comprised in Khasra nos. 57/23 (4-16), 65/3 (4-16) and 65/8/1 (1-8), situated in the Revenue Estate of Village Mundka, Delhi, have lapsed in view of sub-section 2 of Section 24 of The Right to fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; and

b) issue a writ of mandamus directing the respondents to release the said lands immediately with peaceful physical possession to the petitioner; and

c) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present WRIT. ”

2. The Petitioner claims that he is the ‘owner’ of land measuring 1 bigha 10 biswas in Khasra No.57/23 (4-16), 65/3 (4-16) and 65/81 (1-8) in the revenue estate of village Mundka, Delhi.

3. On 21st March 2003 a notification was issued under Section 4 of the Land Acquisition Act, 1894 (LAA) for acquisition of the aforementioned land for the public purpose of ‘100 meter road’ at Mundka under the planned development of Delhi. This was followed by a declaration dated 18th March 2004 under Section 6 LAA. Thereafter, an Award No.01/DC/W/05-06 was passed by the Land Acquisition Collector (LAC) on 28th August 2005.

4. The Petitioner states that his father late Shri Laxmi Chand Kaushik was the real owner having purchased the property by virtue of the sale deed dated 24th July 1990 executed by one Shri Tarif Singh. Shri Laxmi Chand died intestate leaving behind his wife, two sons (including the Petitioner) and a daughter. The other legal heirs executed a relinquishment deed dated 26th June 2007 in respect of their shares in favour of the Petitioner.

5. The Petitioner claims that he challenged the acquisition proceedings in this Court by filing WP(C) 23387-90 of 2005 in this Court. The said petition

was dismissed by a judgment dated 9th July 2007.

6. The Petitioner states that after the coming into force of the Right to fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act') with effect from 1st January 2014, he filed applications with the LAC on 21st December 2016, 4th January 2017 and 24th January 2017 seeking compensation under the 2013 Act.

7. The Petitioner claims that he is entitled to the relief of declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the 2013 Act. He does not dispute that possession of the land has been taken but denies that compensation was tendered. He places reliance on certain orders passed by this Court in similar circumstances granting relief under Section 24(2) of 2013 Act following the decisions of the Supreme Court in ***Pune Municipal Corporation v. Harakchand Misirimal Solanki (2014) 3 SCC 183***, ***Shri Balaji Nagar Residential Association v. State of Tamil Nadu 2015 (3) SCC 353***. A copy of one such order dated 2nd April 2016 in WP(C) 3209 of 2015 (***Bhim Sain Goel v. Govt. of NCT of Delhi***) has been enclosed with the petition as Annexure-P8.

8. CM 7667 of 2019 has been filed by the DDA seeking appropriate orders for permitting the land in question to be utilised for construction of the Urban Extension Road-2 (UER-2) which is a National Highway and for which purpose the land is required. It is maintained that possession of the land in question was originally taken over by the LAC and handed over to the DDA on 24th December 2008. The possession proceedings have been

enclosed with the counter-affidavit separately filed by the DDA. It is submitted that the UER-2 although not part of the Rohini Residential Scheme is affecting several sectors of the Rohini Residential Scheme as it has been declared as a National Highway Road No.344M. Reference is made to the orders passed by the Supreme Court in SLP(C) No. 16385-16388 of 2012 (*Rahul Gupta v. Delhi Development Authority*) where in matters of acquisition of land for the Rohini Residential Scheme the Supreme Court has on 18th October 2016 declared that the DDA deemed to be in possession of such lands if they are not surrendered it to the DDA within ten days of the order. Further the Supreme Court has permitted the DDA to produce the said order before the High Court to vacate all interim orders passed in respect thereof.

9. There is no explanation anywhere in petition for the Petitioner not taking any steps between the date of the dismissal of his WP(C) 23387-90/2005 by this Court on 9th July 2007 and 21st December 2016 when he purportedly applied to the LAC for compensation. In other words the petition is totally silent what the Petitioner was doing for 9 long years. Clearly from the Petitioner's point of view he treated the issue of claiming compensation as a closed chapter. In *Indore Development Authority vs. Shailendra (2018) 3 SCC 412* the Supreme Court observed in paras 128 to 130 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.”

10. The decisions in *Pune Municipal Corporation (supra)* and *Shri Balaji Nagar Residential Association v. State of Tamil Nadu (supra)* did not consider the issue of delay, laches and stale claims precluding a person from seeking relief under Section 24 (2) of 2013 Act. That issue was examined in *Mahavir v. Union of India (2018) 3 SCC 588* and the said decision was reaffirmed by the three-Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra (supra)*. On this aspect the three Judge Bench in *Indore Development Authority v. Shailendra* was unanimous. Therefore, this was not one of the issues which was referred to the Constitution Bench by the order in *Indore Development Authority v. Shyam Verma (2018) 3 SCC 405*. This legal position has been explained by this Court in its decision dated 27th January 2019 in WP (C) 4528/2015 (*Mool Chand v. Union of India*).

11. The earlier decisions of this Court granting relief under Section 24 (2) of the 2013 Act were delivered at a time of the decision in *Indore Development Authority v. Shailendra (supra)* was not available and, therefore, had no occasion to consider this aspect.

12. Consequently, it is not possible for the Court to entertain the present petition. The question of the Petitioner being granted any relief in terms of Section 24(2) of the 2013 Act does not arise. However, the dismissal of this

petition will not preclude the Petitioner, if so advised, to pursue his remedy of seeking compensation under the LAA by approaching the LAC in accordance with law. With the above observations, the petition is dismissed. The pending application is also disposed of.

S.MURALIDHAR, J

SANJEEV NARULA, J

FEBRUARY 27, 2019

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