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

+ **W.P.(C) 1213/2018 & CM APPL 27319/2019**

RAJENDER PRASHAD MAKHARIA & ORS. Petitioners

Through: Mr. K.G. Sharma, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents

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

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE ASHA MENON

ORDER
30.05.2019

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CM APPL 27319/2019(restoration)

1. For the reasons explained therein, the application is allowed. The order dated 28th May 2019 is recalled. W.P. (C) 1213 of 2018 and the pending application are restored to file.

W.P.(C) 1213/2018

2. The prayers in the petition read as under:

“(a) quash the land acquisition proceedings and Award No. 7/1969 passed by the respondent No.2 under section 11 of the Land Acquisition Act, 1894 in respect of the land of the petitioners (in the name of Smt. Vidya Devi - mother and grandmother of the petitioner) measuring 1Bigha 4Biswas, situated at village Shakarpur Khas, Ilaqa Shahdra, Delhi, comprising Khasra No. 236/2/2;

(b) issue appropriate writ/order/direction/rule restraining the respondents from interfering in the peaceful possession of the said land measuring 1 Bigha 4 Biswas, situated at village Shakarpur Khas, Ilaqa

Shahdra, Delhi, comprising Khasra No. 236/2/2 shown under the ownership of Smt. Vidya Devi in revenue records.”

3. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 13th November 1958, followed by declaration under Section 6 of the LAA on 18th March 1966. The impugned Award No. 7 was passed way back in 1969. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

4. It is stated in the Petition that the subject land in Khasra No. 236/3(236/2/2) was initially purchased by one Smt Vidya Devi from Mr. Narsingh Das via registered sale deed dated 10th January 1966. It is stated that Smt. Vidya Devi is the mother and grandmother of the Petitioners. It is stated that she died on 30th July 2005 she died intestate leaving behind her husband Shri C.M. Makharia and Petitioners 1-9 as her legal heirs

5. It is then stated that Shri C.M. Makharia died intestate on 10th November 2005 and left behind Petitioners 1-9 as the legal heirs to the property. It is stated that the LAC initiated land acquisition proceedings and that “The total land in Khasra No. 236/2/2 consisted of 6 Bigha 16 Biswas out of which 4 Bigha 3 Biswas has been acquired and the possession of the same has been taken and transferred to the Land and Building Department of respondent No.1.” It is further stated that 1 Bigha and 4 biswa of land is in the name of Smt Vidya Devi, 1 Bigha 5 biswa is in the name of Rewati and Balwant Singh and land measuring 4 biswa is in the name of Jawahar Lal. It is stated that possession of the above land has not been taken till date. It is stated in Para 3 (iv) of the petition that possession of the lands is still with the Petitioners and no compensation has been paid to the Petitioners till date.

6. It is stated in the petition that on 16th March 1983 some persons claiming themselves to be officials of DDA came to the land belonging to Smt. Vidya Devi and forcibly started digging foundation on the subject land and tried to dispossess the Petitioners. The mother of the Petitioners filed a Civil Suit No. 660/2004 for permanent injunction which was decided in favour of Smt. Vidya Devi. The DDA preferred an appeal against the said order of the Civil Judge and vide judgment dated 25th January 2010 the Ld. ADJ Delhi allowed the appeal and reversed the order of the Ld. Civil Judge. The Petitioners filed a second appeal being RSA 100/2010 in which the court ordered demarcation of the land on 28th January 2014. In the demarcation report it was stated that in Khasra No. 236/2/2, land measuring 1 bigha and 4 biswa belonged to Smt. Vidya Devi and the same stood acquired as the LAC acquired the subject land in Khasra No. 236/2/2. The High Court dismissed RSA No. 11/2010 by order dated 17th August 2016.

7. The Petitioners then filed SLP (C) No. 6501/2017 in the Supreme Court which was dismissed as withdrawn on 3rd March 2017 with liberty to the Petitioners to “raise his right under Section 24 (2) of the 2013 Act before the appropriate forum”. Thereafter the present petition was filed praying for a declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 (‘the 2013 Act’). In the present case the Award was passed way back in 1969, the land acquisition proceedings have become final and the Petitioners cannot now come to the court and ask for a prayer of lapsing of acquisition proceedings under Section 24(2) of the 2013 Act.

8. The above narration shows that the Petitioners were throughout litigating to save their possession of the land in question without ever questioning the validity of the

land acquisition proceedings. They did not succeed in their endeavour to save possession since the litigation ended when they withdrew their SLP challenging the order dated 17th August 2016 passed by this Court in RSA No. 11/2010. The mere fact that they were permitted to withdraw the said SLP with liberty to raise a claim under Section 24 (2) of the 2013 Act did not mean that their entitlement to that relief was recognised.

9. As far as the relief under Section 24 (2) of the 2013 Act is concerned, the land acquisition Award having been passed nearly five decades ago in 1969, and the present petition having been filed in 2018, it is clearly barred by laches. The mere fact that the 2013 Act became operational on 1st January 2014 would not relieve the Petitioners of having to explain why they did not challenge the acquisition proceedings for nearly five decades despite being aware of the same. They appear to have only litigated, and that too unsuccessfully, about their possession. This would not, in the considered view of this Court constitute a satisfactory explanation for the inordinate delay in approaching the Court for the relief under Section 24 (2) of the 2013 Act. In this context the following observations of the Supreme Court in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 are relevant:

“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 on the ground of laches but in the circumstances, with no orders as to costs. The interim order passed by this court on 9th February 2018 which stood confirmed on 10th April 2018 stands vacated.

S. MURALIDHAR, J.

ASHA MENON, J.

MAY 30, 2019/mw