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

Date of decision: 2nd September, 2019

+ W.P.(C) 9526/2019

SUSHMA LODHI & ORS.

..... Petitioners

Through: Mr. Varun Thakur, Mr. Brajesh
Pandey and Ms. Nita
Sukhanandi, Advocates.

versus

UNION OF INDIA& ORS.

..... Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti
Tyagi, Advocates for
LAC/L&B.
Mr. Arjun Pant, Advocate for
DDA.
Mr. Pratyush Miglani and
Ms. Smriti Varma, Advocates
for R-1/UI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J.(Oral):

1. This is a second round of challenge in respect of land acquisition proceedings after the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter 'the 2013 Act') in the present matter. Petitioners' first contest was by way of W.P. (C) No. 3680/2016, titled as *Sushma Lodhi v. Union Of India*, wherein a

declaration was sought to the effect that the land acquisition proceedings in respect of Award bearing No. 211/86-87, be deemed to have lapsed under Section 24(2) of the 2013 Act, since the Award was made more than five years prior to the commencement of the Act and compensation has not been paid to Petitioners. Since there was inordinate delay in filing the petition, the said petition was dismissed as withdrawn, vide order dated 18th December 2018, with liberty to the Petitioners to file a proper petition explaining inordinate delay in approaching the Court. Petitioners have availed aforesaid liberty and filed the present petition, but unfortunately, have again failed to satisfactorily explain the delay and the present petition is a re-iteration of the facts and grounds urged in the earlier petition WP(C) 3680/2016. A reading of the petition reveals that the Petitioners have endeavoured to explain the delay by contending that they took efforts to collect records of correspondence between the Petitioners and Land Acquisition Collector (LAC) - Respondent No. 3 and also filed an application and an appeal in that regard under the RTI Act, 2005, but were unsuccessful. Apart from the factual narrative dealing with filing of RTI application and an appeal in that regard, there are no additional submissions in comparison with the earlier petition.

2. The present petition seeks following reliefs:

"a). Issue an appropriate writ, order or direction to quash the entire land acquisition proceedings and award no. 211/86-87 (ANNEXURE P-3) in respect of the land bearing Khasra Nos. 1min, 2min, 26min, 27min, 28min, 29min, 30min, 31min. 32min/1 are measuring 50 bighas 4 biswas situated in the revenue estate of village

Sanjarpur, Delhi and ;

b). Issue an appropriate writ, order or direction to the respondents to produce the entire records related to the land acquisition proceedings & Award No.211/86-87 (ANNEXURE P-3) and;

c). Issue an appropriate writ, order or direction to the Respondent such other appropriate writ, order or direction as may be deemed fit and proper in the facts and circumstances of the case;

d). Any other relief or order which deems fit and proper in the facts and circumstances of the case in the interest of justice."

3. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter 'the LAA'), read with Section 17(4) of the Act was issued on 18th November 1980. On the same date, declaration under Section 6 of the Act was issued. The notification and declaration were challenged by the Petitioner by way of W.P. (C) No. 1319/1983, titled as *Nathu Singh & Ors v. Union of India & Ors.*, wherein vide order dated 22nd June 1983, this court passed a status quo order with respect to the possession. It is the case of the Petitioner that during the continuance of the status quo order, on 22nd September 1986, Award bearing no. 211/86-87 was passed in respect of land admeasuring 126 Bighas 12 biswas situated revenue estate of village Sanjarpur, Delhi including Khasra Nos. 1min, 2min, 26min, 27min, 28min, 29min, 30min, 31min. 32min/1 ad measuring 50 bighas 4 biswas also situated in the revenue estate of village Sanjarpur, Delhi and the aforesaid petition filed by Petitioners was disposed of vide order dated 14th

December 1995. The challenge against the said order was also dismissed by the Supreme Court.

4. The stand of Delhi Development Authority (DDA)- Respondent No. 2, in the counter affidavit, in W.P. (C) 3680/2016, is that acquisition proceedings have become final; possession of the Khasra Nos. 1min, 2min, 26min, 27min, 28min, 29min, 30min, 31min. 32min/1 ad measuring 50 bighas 4 biswas situated in the revenue estate of village Sanjarpur, Delhi (hereinafter 'subject land') has been handed over by the Land Acquisition Collector (LAC) to DDA on 8th January 2004; Petitioners have not enclosed documents to prove their title over the subject land and the petition is barred by delay and laches.

5. LAC- Respondent No. 3 in its counter affidavit in W.P. (C) 3680/2016, affirmed the stand taken by DDA. Further it is stated that on 8th January 2004, possession of land comprised in Khasra Nos. 1 min, 2min, 26 min, 27 min, 28 min, 29 min, 30 min, 31 min, 32 min/1total admeasuring 50 bighas 4 biswa was acquired and the payment of majority of compensation to the recorded owners has been made.

6. From the facts mentioned above, it becomes evident that petitioners' challenge to the acquisition proceedings stood concluded with the dismissal of the earlier writ petition and the challenge thereto by the respondents before the Supreme Court. After passing of the 2013 Act, the challenge to the acquisition proceedings is made again

on the surmise that Petitioners have not been paid compensation in respect of the subject land.

7. Be that as it may, in view of the stand taken by the Respondents in their counter affidavit, the question as to whether compensation was deposited in the account of the land owner for the suit property or not, and whether possession has been taken or not, is a disputed question of fact, which cannot be decided in writ jurisdiction of this Court. There is no explanation whatsoever offered in the petition for the inordinate delay in coming forward to seek relief under Section 24 (2) of the 2013 Act. The Award for the subject land was passed in 1986, whereas the present petition has been filed after more than three decades claiming that they are in possession of the subject land. Petitioners have also not annexed any document with the petition that would even remotely indicate that they continued to remain in possession. The petition is obviously barred by laches. After such length of time the respondents cannot be expected to fish out from the record, the relevant documents to establish payment of compensation to the petitioner. The inordinate delay places the respondents to immense handicap and prejudice in the matter of defending these proceedings.

8. The Supreme Court has dealt with issue of delay and laches in ***Mahavir v. Union of India (2018) 3 SCC 588***, in the context of the 2013 Act. The said judgment is unambiguous in emphasising that claims that are barred, and where there is total inaction, are not meant

to be revived by the 2013 Act. The relevant observations of the Supreme Court in the said decision read as under:

“22. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, Section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under Section 31(1) in such cases would attract only interest as envisaged under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.

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.

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26. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24(2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years.”

(emphasis supplied)

9. The aforesaid Judgment has been considered by the Supreme Court in the decision of *Indore Development Authority v. Shailendra* reported at *(2018) 3 SCC 412*, relevant portion of which is reproduced hereunder:-

“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.”

(emphasis supplied)

10. This Court has also dealt with the issue of delay and laches in the case of *Mool Chand v. Union of India* (W.P. (C)4528/2015) dated 17th January 2019, wherein the Court while elaborating the decision of *Mahavir v. Union of India*, (2018) 3 SCC 588 and *Indore Development Authority v. Shailendra*, (2018) 3 SCC 412, on the aspect of delay and laches, made the following observations:

"34. The question then arises whether only the points of difference between the decisions in *Pune Municipal Corporation* (supra) and *Indore Development Authority v. Shailendra* (supra) and all issues incidental thereto have been referred to the Constitution Bench? In this context it requires to be noted that although several questions were framed in *Indore Development Authority v. Shailendra* (supra), it is only on Question I, viz., on whether the deposit in the RD Account would amount to having tendered compensation for the purposes of Section 24 (2) of the 2013 Act, that there was a difference of opinion between the view expressed in the two decisions viz., *Pune Municipal Corporation* (supra) and *Indore Development Authority v. Shailendra* (supra).

35. The other point of difference was that arising in *Yogesh Neema v. State of MP* (supra) where the correctness of the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* (supra) as regards exclusion of the period covered by the interim orders from the calculation of the period of five years

under Section 24 (2) of the 2013 Act was questioned. On this point the three-Judge Bench in *Indore Development Authority v. Shailendra* (supra) unanimously overruled the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* (supra). On this issue no subsequent Bench of the Supreme Court of co-ordinate strength appears to have taken a contrary view. It is doubtful, therefore, whether this issue would be examined by the Constitution Bench.

36. Relevant to the issue on hand, there was no difference of view qua Question III addressed in *Indore Development Authority v. Shailendra* (supra) i.e. “Whether section 24 of Act of 2013 revives barred and stale claims?” On this question there was no view (much less a contrary view) expressed in *Pune Municipal Corporation* (supra) or for that matter in any other subsequent decision of a smaller, co-ordinate or even larger Bench of the Supreme Court. This question, therefore, was not the subject matter of reference before the Constitution Bench.

37. Consequently, this Court is of the view that although the order passed by the Constitution Bench refers to “all the aspects” being considered by the Constitution Bench, that expression would not include questioning the correctness of the decision of the three-Judge Bench in *Indore Development Authority v. Shailendra* (supra) as far as it holds by a unanimous opinion that Section 24 (2) of the 2013 Act cannot revive old and stale claims.”

(emphasis supplied)

11. This Court has also passed judgments such as in W.P. (C) 586 of 2016 (*Sushma Purthi v. Union of India*) dated 31st January 2019, W.P. (C) 4919 of 2014 (*Krishan v. Union of India*) dated 25th January

2019 and W.P. (C) 2702/2019 (*Mohd. Mian v. Union of India*) dated 5th February 2019, dismissing similar petitions seeking a declaration under Section 24(2) of the 2013 Act, on the ground of delay and laches. Challenge against all these judgments have been dismissed by the Supreme Court vide SLP (C) No. 11481/2019, SLP (C) No. 13423/2019 and SLP (C) No. 8848/2019, respectively. It also needs to be emphasized that this court has dismissed several other petitions on the ground of delay and laches and challenge against said decisions, before the Supreme Court, has also been dismissed.

12. Following the aforementioned decisions and in the light of the facts and circumstances listed out hereinbefore, the Court dismisses the present petition both on the ground of laches as well as merits.

SANJEEV NARULA, J.

VIPIN SANGHI, J.

SEPTEMBER 02, 2019

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