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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 946/2017 & CM Appl. No. 38101/2018**
SHRI BIJARAM SARBATI DEVI JAIN DHARMARTH SOCIETY
..... Petitioner
Through: Mr. M.P.Bhargava, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through: Mr. Yeeshu Jain with Ms. Jyoti
Tyagi, Advocates for Respondent/LAC/L & B
Mr. Arun Birbal & Mr. Ajay Birbal,
Advocates for Respondent/DDA

+ **W.P.(C) 948/2017 & CM Appl. No. 4325/2017**

RAJ KUMAR JAIN Petitioner
Through: Mr. M.P.Bhargava, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through: Mr. Yeeshu Jain with Ms. Jyoti
Tyagi, Advocates for Respondent/LAC/L & B
Ms.Shobhna Takiar, Advocate for
Respondent/DDA

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER
18.01.2019

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Dr. S. Muralidhar, J.:

1. These two petitions arising out of common set of facts and are being disposed of by this common order.
2. In both petitions, the prayer is for a declaration of deemed lapsing of land

acquisition proceedings in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act').

3. As far as WP(C) No. 7946/2017 is concerned, land admeasuring 720 sq. yds. comprised in property No. 1074-75-76 in Khasra No.53/19 in the Revenue Estate of Village Karala, Tirthankar Nagar, Jain Colony, Delhi is involved. As far as WP(C) No. 948/2017 is concerned, land admeasuring 234 sq. yds comprised in Property No.1073 in the same Khasra Number is situated in village Karala.

4. In both petitions the narration reveals that the notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 21st March, 2003 for the purpose of the Rohini Residential Scheme which included a larger extent of 3 to 6 bighas of land. This was followed by a declaration under Section 6 of the LAA on 18th March, 2004. An Award was passed on 10th January, 2006.

5. It is pointed out in both petitions that the subject land is part of the Jain colony which is an unauthorised colony. The status report dated 4th December, 2006 issued by the Additional District Magistrate, Kanjhawala has been enclosed. It is stated that the said report shows that:

“the possession of the Jain Colony, Tirthankar Nagar, Delhi, was not taken because of built up, same comprises densely built up residential dwellings and included in list of 1071 unauthorized colonies and is pending for regularization.”

6. It is however maintained that as far as the Petitioner in WP(C) No. 946/2017 is concerned, he continues to be the actual owner in possession of the land in question as till date neither the physical possession has been taken nor has the compensation been paid. As regards the Petitioner in WP(C) No. 948/2017 is concerned, it is admitted that he purchased the land in question on 2nd June, 2005 after the Sections 4 and Section 6 of the LAA notifications were issued. Clearly, therefore, the said sale was illegal.

7. In both writ petitions a counter affidavit has been filed by the DDA along with an application for vacation of stay. It is *inter-alia* pointed out that the lands in question form part of the larger extent of land acquired for the Rohini Residential Scheme. Reference is made to the orders passed by the Supreme Court in SLP (C) No. 16385-88/2012 titled '**Rahul Gupta vs. DDA**' in terms of which possession of the land acquired by the Rohini Residential Scheme is deemed to be with the DDA. It is further pointed out that physical possession of the land after demolishing the existing construction was handed over to the DDA on 23rd February, 2007. A copy of the possession proceedings is enclosed as Annexure R-2. It is further stated that land was transferred to the RPD-I being part of a Rohini Residential Scheme on 18th January, 2007.

8. As far as WP(C) No. 948/2017 is concerned, it is pointed out by the DDA the land in question is part of 35 unauthorised colonies in the Rohini Zone that are awaiting regularisation. In the counter affidavit of the LAC it is confirmed that physical possession was taken by the Government on 23rd February, 2007. It is pointed out that the Petitioner in WP(C) No. 948/2017

never approached the office of the LAC for payment of compensation.

9. A preliminary objection has been raised that the petitions are barred by laches. The narration in the petitions themselves show that the Award was made way back on 10th January, 2006 and no steps were taken by the Petitioners for well over a decade to seek any relief in respect of the land acquisition proceedings and in particular to claim compensation.

10. As regards possession, in terms of the orders of the Supreme Court in the case of **Rahul Gupta v. DDA** pertaining to the Rohini Residential Scheme the DDA is deemed to be in possession of the lands in question acquired for that purpose. Therefore, the essential conditions for a declaration of deemed lapsing of land acquisition proceedings under Section 24 (2) of the 2013 Act are not fulfilled in the present case. At the highest, the assertions of the Petitioners to the contrary give rise to a disputed question of fact which cannot be examined in the present case.

11. There are two other major difficulties in the way of the Petitioners being granted the relief prayed for. One is that the petitions are barred by laches. In **Indore Development Authority v. Shailendra (2018) 3 SCC 412** the Supreme Court 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.”

12. 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 (2014) 3 SCC 183* regarding the tendering of compensation, and 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 its decision dated 17th January 2019 in W.P. (C) 4528 of 2015 (*Mool Chand v. Union of India*).

13. The other difficulty that arises is that as far as WP(C) No. 948/2017 is concerned, the admitted position is that the land in question is part of an unauthorised colony. This Court has consistently been refusing the relief of declaration of deemed lapsing of land acquisition proceedings when the property in question is a part of unauthorised colony. In its order dated 10th January, 2019 in WP (C) No. 3630/2018 (*Akhil Sibal s. GNCTD*) it was observed in this context by this Court as under:

“16. It appears that the Petitioners are pursuing parallel proceedings and seeking different reliefs in respect of the same lands in question – one is to seek regularization by contending that the building on the land in question is part of an unauthorized colony, the other is to invoke Section 24 (2) of the 2013 Act, to seek lapsing of the land acquisition proceedings. In the considered view of the Court, the attempt at invoking Section 24 (2) of the 2013 Act is, in the

circumstances, misconceived. Clearly, therefore, the present petitions are an abuse of the process of the Court where the facts speak for themselves.

17. Further, the manner in which the facts have been narrated, a relief under Section 24 (2) of the 2013 Act, is not even capable of being granted in either of the petitions. In similar circumstances, this Court had in its order dated 19th December, 2018 in W.P.(C) No.190/2016 **R. Bhagwan Batra v. Government of NCT of Delhi**, rejected the prayers of the Petitioners where they were seeking a similar relief in respect of the land in an unauthorized colony i.e. Guru Ram Das Nagar. The Court there has pointed out that the Petitioners should be pursuing their case for regularization.

18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting regularization orders. A large portion of these colonies are by way of encroachment on public land. Some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premise on which such regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those structures. That very basis gets contradicted as some of them tried to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable.”

14. Consequently, the petitions are dismissed both on the ground of laches as well as on merits. The applications are also disposed of as such.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 18, 2019/mw