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

+ **W.P.(C) 991/2015 & CM NO. 1748/2015**

SHRI DAYANAND & ORS. Petitioners

Through: Mr. B.S. Mathur, Advocate

versus

UNION OF INDIA & ORS. Respondents

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

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

17.07.2019

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1. The prayer in the petition reads as under:

“a) Issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to the said land of the Petitioners having lapsed, including the Award No. 25/2005-06/DC (N-W) pronounced on 06.02.2006 with respect to Khasra No.6/16 (2-0), total measuring 2 Bigha situated in the revenue estate of Village Patti-Nithari, Delhi.”

2. It is stated in the petition that the Petitioners are the “recorded Bhoomidar of land bearing Khasra No. 6/16(2-0) situated in the revenue estate of Village Karari Suleman Nagar, Patti Nithari, Delhi.” It is further stated that the Award was passed in 2006 and till date the possession of the subject land is lying with the Petitioner and no compensation has been paid to the Petitioner.

3. The narration in the petition reveals that notification under Section 4 of

the Land Acquisition Act, 1894 ('LAA') was issued on 21st March 2003, followed by a declaration under Section 6 of the LAA on 19th March 2004. The impugned Award No. 25/2005-06 was passed on 6th February 2006. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

4. In the counter-affidavit filed on behalf of the LAC, it is submitted that the possession of Khasra No. 6/16(2-0) was taken and handed over to the DDA on 13th October 2006. It is submitted that the said Khasra number consisted of total measurement as (4-16) out of which the possession of above-said 2 Bighas was taken and the remaining (2-16) could not be taken due to 'built up' structures thereon and the compensation for the said built-up structure (2-16) could not be paid. It is further submitted that compensation was paid to the recorded owners on 8th November 2006.

5. In the counter-affidavit filed by the DDA, it is submitted that the petition is barred by delay and laches. It is further submitted that as per the land records, the subject land was acquired by the LAC on 13th September 2006 and handed over to the DDA. The DDA further transferred the subject land to the Engineering Wing on 18th October 2006 for its development.

6. In the rejoinder filed by the Petitioners to the counter affidavit of LAC it is denied that the physical possession of the subject land was taken. However, in para 5 of the rejoinder, it is stated "With respect to compensation, the same might have been received under protest but the actual physical cultivatory possession continues with the Petitioners till date

i.e. for ten years.” In the rejoinder filed to the counter affidavit of the DDA, all averments by the DDA are denied and again the Petitioners have stated that they are in possession of the subject land.

7. The assertion by the Petitioners that they continue to remain in possession of the land in question gives rise to a disputed question of fact which cannot be examined in this petition. Further the Petitioners admit to having received compensation although it is now sought to be contended that “the same might have been received under protest.” There is nothing placed on record to show that the compensation was received under protest.

8. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

9. 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.”

10. Mr. B.S. Mathur, learned counsel for the Petitioners, sought to distinguish the said decision in *Mahavir* by pointing out that in the said case the acquisition was nearly a hundred years old, whereas in the present case the Award is of 2006. The fact remains that the present petition has been filed nine years after the passing of the Award. Also, the decision in *Mahavir* has been 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 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/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.”

11. 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 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 in *Mool Chand v. Union of India 2019 (173) DRJ 595 DB*.

12. For the aforementioned reasons, the writ petition is dismissed both on the ground of laches as well as on merits, but in the circumstances, with no orders as to costs. The pending application is also dismissed. The interim order passed by this Court on 2nd February 2015 stands vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 17, 2019
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