

\$~53, 54, 55, 56

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

+ **W.P.(C) 1470/2017**

M/S MERINO REALTORS (P) Ltd. .... Petitioner

Through: Mr. Vishal Singh, Advocate

versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. Arun Birbal for DDA  
Mr. Sanjay Kumar Pathak, Mr. Sunil  
Kumar Jha, Mr. M.S. Akhtar for  
L&B/LAC

**W.P.(C) 1484/2017**

M/S MERINO REALTORS (P) Ltd. .... Petitioner

Through: Mr. Vishal Singh, Advocate

versus

UNION OF INDIA & ORS. .... Respondents

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

**W.P.(C) 2160/2017**

K.M. SHARAN .... Petitioner

Through: Mr. Vishal Singh, Advocate

versus

UNION OF INDIA & ORS. .... Respondents

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

**W.P.(C) 2174/2017**

POONAM CHAND

..... Petitioner

Through: Mr. Vishal Singh, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Pawan Mathur for DDA  
Mr. Sanjay Kumar Pathak, Mr. Sunil  
Kumar Jha, Mr. M.S. Akhtar for  
L&B/LAC

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

**17.07.2019**

%

1. In all these petitions, the facts are more or less are similar and the reliefs sought are identical. They are accordingly being disposed of by this common order. Nevertheless, each of the petitions was heard separately.

2. For the sake of convenience W.P.(C) 1470 of 2017 titled *M/s Merino Realtors (P) Ltd. v. Union of India & Ors.* is taken up as the lead case. The prayers in the petition read as under:

“i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to 1/5<sup>th</sup> undivided share in agricultural land measuring 81 Bighas and 6 Biswas (Equal to 16 Bighas and 5 Biswas), comprised in Khasra Nos. 600 (2-15), 629 (44-9), 639 (12-4), 647 (8-7), 649 (2-8), 651 (0-17) & 972/673/674/367 (10-6), situated in the revenue estate of Village Maidan Garhi, NCT of Delhi, having lapsed and further quashing the impugned notification No. F.9(16)/80- L&B dated 25.11.1980 issued under section 4, Notification No.F.9(28)/85-L&B dated 18.06.1985

issued under Section 6 of the Land Acquisition Act, 1894 and the Award no.23/87-88 with respect to 1/5<sup>th</sup> undivided share in agricultural land measuring 81 Bighas and 6 Biswas (Equal to 16 Bighas and 5 Biswas), comprised in Khasra Nos. 600 (2-15), 629(44-9), 639 (12-4), 647 (8-7), 649 (2-8), 651 (0-17) & 972/673/674/367 (10-6), situated in the revenue estate of Village Maidan Garhi, NCT of Delhi.

AND

(ii) issue a writ of mandamus and/or any other writ, order and direction of the similar nature issuing directions to the Respondents not to disturb or hinder the possession and enjoyment of the Petitioner over 1/5<sup>th</sup> undivided share in agricultural land measuring 81 Bighas and 6 Biswas (Equal to 16 Bighas and 5 Biswas), comprised in Khasra Nos. 600 (2- 15), 629(44-9), 639 (12-4), 647 (8-7), 649 (2-8), 651 (0-17) & 972/673/674/367 (10-6), situated in the revenue estate of Village Maidan Garhi, NCT of Delhi.”

3. The narration in the petition reveals that the notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 25<sup>th</sup> November 1980, followed by declaration under Section 6 of the LAA on 7<sup>th</sup> June 1985. The impugned Award No. 23/1987-88 was passed way back on 17<sup>th</sup> June 1987. 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 Petitioner is the owner in actual physical possession of undivided share in agricultural land measuring 81 Bighas and 6 Biswas (Equal to 16 Bighas and 5 Biswas), comprised in Khasra Nos. 600 (2-15), 629(44-9), 639 (12-4), 647 (8-7), 649 (2-8), 651 (0-17) & 972/673/674/367 (10-6), situated in the revenue Estate of Village

Maidan Garhi.” It is stated in Para 8.2 of the Writ Petition that the Petitioner entered into a series of Agreements to Sell (ATS) dated 10<sup>th</sup> September 2005 and General Powers of Attorney dated 19<sup>th</sup> September, 2005 (GPAs) with (i) Shri Attar Singh (ii) Shri Amarjit Singh (iii) Shri Satish Kumar (iv) Smt. Prakashvati and (v) Shri Arvind Kumar. It is further stated that since then the Petitioner is in physical possession of the subject land and compensation has not been paid, the Petitioner is entitled to the relief of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘the 2013 Act’).

5. In the counter affidavit filed on behalf of the LAC, it is submitted that the Petitioner is claiming ownership of the land based on an ATS and GPA, which are not valid instruments conferring title on the Petitioner. It is stated that possession of Khasra Nos. 600 (2-15), 629 (44-9), 639 (12-4), 647 (8-7), 649 (2-8), 651 (0-17)972/673/674/367 (10-6) was taken and handed over to the DDA on 16<sup>th</sup> July 1987. On the aspect of compensation, it is submitted that the compensation amount has been paid to the recorded owners. In the present case, a compensation amount of Rs. 5,09,237.84 was paid to Shri Attar Singh, Shri Amarjit Singh and Shri Satish Kumar in 1987 itself.

6. 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 the Petitioner has purchased the property in question through GPAs and ATSs which are not valid instruments of sale. It is also submitted that the land in question has been purchased by the Petitioner after the award had been passed which is

barred by Section 4 of the Delhi Land (Restriction on Transfer) Act, 1972. It is confirmed that the land was taken over and handed to the DDA on 16<sup>th</sup> July 1987. No rejoinder has been filed by the Petitioner to the counter affidavit of the LAC or the DDA.

7. The averments and pleas in the companion petitions are identical with the only difference being the description of the lands in respect of which the relief is claimed. The responses thereto of the Respondents are identical to the replies filed herein.

8. In any event, the assertion of 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. Moreover, the documents on the basis of which the Petitioners are claiming ownership are not valid. A perusal of the said documents reveals that they do not confer any valid right, title or interest in respect of the lands in question in favour of the Petitioners. In these cases, the Notification under Section 4 of LAA was passed on 25<sup>th</sup> November 1980 and the Award was passed on 5<sup>th</sup> June 1987. The Petitioners having full knowledge about the status of the land in question and without taking permission from the competent authority as required under Delhi Land (Restriction of Transfer) Act, 1972 have entered into the above transactions in respect of the lands in question. The validity of the above documents are, therefore, extremely doubtful. In the circumstances, the Court is not satisfied that the Petitioners have been able to even *prima facie* demonstrate its locus standi to file this petition and claim any relief under Section 24 (2) of the 2013 Act.

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. The above decision 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/negatived, 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 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 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.

12. For the aforementioned reasons, the writ petitions are dismissed both on the ground of laches as well as on merits, but in the circumstances, with no orders as to costs.

13. Interim orders, if any, stand vacated in all petitions.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**JULY 17, 2019**

abc