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

+ **W.P.(C) 1456/2015**

MRS. KAMAL NAIN & ANR. Petitioners
Through: Mr. Pranay Raj Singh,
Advocate
versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr. Rajesh Kumar, Senior
Panel Counsel for UOI.
Mr. Digvijay Rai with Mr.
Aman Yadav, Advocates for
SDMC.
Mr. Arjun Pant, Advocate for
DDA.
Mr. Yeeshu Jain, Standing
Counsel with Ms.Jyoti Tyagi,
Advocate for LAC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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10.07.2019

1. The prayer in the petition reads as under:

“a) Pass a writ of Certiorari, Mandamus or any other appropriate writ or direction quashing thereby Award No. 17/87-88 passed in relation to Khasra 246, Village Khanpur 64-B, Sainik Farms, New Delhi.”

2. It is stated in the writ petition that the Petitioners are sisters who have inherited their father's share in the subject land by way of a Will dated 15th May 2007. It is stated that the father purchased the property in 1992. It is stated that the subject land was let out by the father to one Shri Anil Jain by lease deed from 2013 to 2015. It is stated that the Petitioner No.1 was facing problems in relation to enjoyment of

properties bequeathed to her by her father due to which she filed Probate Case No. 02/2014 which is pending. The Tehsildar submitted a report dated 25th September 2014 through which the Petitioner got to know the property stood acquired in 1987. This led the Petitioners to file the present petition.

3. The narration in the petition reveals that a notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') for acquisition of the land in question was issued on 5th November 1980, followed by declaration under Section 6 of the LAA on 6th June 1985. The impugned Award No. 17/87-88 was passed on 5th June 1987.

4. In the counter-affidavit filed on behalf of the LAC, it is stated that the father of the Petitioners has purchased the subject land measuring 1 Bigha 9/1.5 Biswas in 1992 whereas the acquisition proceedings were completed in 1987. It is stated that the father of the petitioners has contravened the provisions of Delhi Land Restriction on Transfer Act, 1971 and the sale deed under reference cannot be taken in consideration for any purposes. It is stated that the Petitioner is claiming relief in respect of Khasra No. 246(4-14) whereas the sale deed reflects the father's share as 1 Bigha 9/1.5 Biswas out of the said Khasra which is to a greater extent than what was purchased by him. It is stated that physical possession of the Khasra No, 246(4-14) was taken and handed over to the DDA on 16th July 1987 and possession of the remaining land (0-02) could not be taken due to the same being built up. On the aspect of compensation, it is stated that "statement 'A' reflected that the payment was disputed against the name of one Shri Gurbax Singh.

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 possession of the land bearing Khasra No. 264(4-14) was taken by the LAC on 16th July 1987 and handed over to the DDA.

6. The rejoinder filed by the Petitioners to the counter affidavit of LAC merely reiterates the averments in the petition. It is stated that the LAC had only taken 'formal possession' in 1987 and has not taken the 'actual physical possession' till date. The Petitioners claim that they have not received any compensation.

7. The assertion by the Petitioners that they continue to remain in possession of the land in question or are entitled to compensation gives rise to disputed questions of fact which cannot be examined in this petition. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

8. 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.”

9. The above decision was 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.”

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 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 both on the ground of laches as well as on merits, but in the circumstances, with no orders as to costs. The interim order dated 18th February 2015 which stood confirmed on 16th May 2018 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 10, 2019
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