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

+ **W.P.(C) 1657/2015**

SUMAN KUMAR SHARMA & ORS. Petitioners

Through: Mr. Umesh Mishra, Advocate

versus

UNION OF INDIA& ORS. Respondents

Through: Mr. Rajesh Kumar, Senior Panel
counsel for UOI.

Ms. Shobhna Takiar with Ms. Shivani Jain for
DDA

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

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

21.02.2019

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1. The prayers in the petition read as under:

“(I) Issue a writ of Mandamus and/or of the like nature against the respondents thereby directing the respondents to return/release the land belonging to the petitioners in khasra no. 143/27, situated in village Basant Nagar, P.O. Vasant Vihar, New Delhi as shown in the site plan annexed with this petition;

(II) Declare the award dt.29.11.1965 passed by the respondent No.2 as null and void in so far as it relates to the land belonging to the petitioners;

(III) Award the cost of the present proceedings to the petitioners.

(IV) Pass such other/further order/orders, which this Hon'ble Court deem fit and proper to the facts and circumstances of the

present case.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 24th May 1961, followed by declaration under Section 6 of the LAA on 18th November 1964. The impugned Award No. 1879 was passed on 29th November 1965. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the counter-affidavit filed on behalf of the LAC, it is submitted that the possession of Khasra No.143/27(0-18) was taken and handed over to the DDA on 28th March 1966. It is also submitted that the Petitioner has not filed any revenue records nor any title documents to support the contention that the Petitioners or their predecessors-in-interest were ever the recorded owners of the land. On the aspect of compensation, it is submitted in Para 5 of the counter-affidavit that:

“The payment was made to the recorded land owner Sh. Arjan S/o Jawahara vide RD refund voucher dated 16/12/1966(Copy enclosed). The receiving copy of has LTI of Arjan which has been identified by awitness. The typed copy of receiving copy is enclosed.The Voucher was issued for Rs. 10,964.03 which includes compensation for the said Khasraas well as compensation pertaining to Arjan S/o Jawahara for 'ShamlatDeh' Land. Thus in present case possession had been taken and compensation had been paid to the interested party for the said Kh. No.143/27.”

4. 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 land bearing Khasra No. 143/ 27/ 1(0-18) was acquired by the

LAC on 28th March 1966 and handed over to the DDA. The DDA further transferred the subject land to the Horticulture Department on 19th July 1971 and for SFS Scheme, DDA on 5th January 1981.

5. The rejoinder filed by the Petitioner to the counter affidavit of LAC merely reiterates the averments regarding compensation and possession made in the petition. It is stated that the LAC had only taken 'formal possession' in 1966 and has not taken the 'actual physical possession' till date. On the aspect of compensation, the Petitioner claims that they have not received any compensation. In the rejoinder the Petitioner has mentioned the following:

“2. That in response to the contents of para 5, it is herein submitted that the document enclosed by the respondent No.2 is only a letter to the Treasury to the effect that the compensation in respect of the land in question be passed for payment as and when presented at the treasury by the concerned persons. Needless to mention that no thumb impression of said 'Arjan' was existing on the document enclosed by the respondent No.2. It is herein submitted that since the petitioners or their predecessors have not received any compensation, the respondent No.2 again sent a letter dt.27th Nov, 1978 to one Sh. Daya Ram, S/O. Sh. Arjun Dev for approaching the Land Acquisition Collector, Deputy Commissioner of the respondent No.2 for payment of compensation. That a copy of the said letter is annexed hereto as ANNEXURE - P -16. Needless to mention that even after receiving of the said letter, neither the predecessors of the petitioners nor the petitioners had received any compensation till date. It is pertinent to point out that the letter dt.27thNov, 1978 clearly evince that the petitioners or their predecessors have not received any compensation in respect of the said award till 27thNov, 1978 i.e. within five years of the passing of the said award dt.29thNov, 1965, therefore, as per Sec.24(2) of the said Act, the Land Acquisition proceedings shall be deemed to have lapsed in respect of the petitioners or their

predecessors. It is further pointed out that as per the scheme of the said Act, the Collector may take the possession of the land when the Collector had paid the compensation to the party entitled to it. That as per the version of the respondent No.2, they had taken the possession on 28th March, 1966 while the intimation regarding compensation was given vide letter dt.16th Dec, 1966 to the predecessors of the petitioners. This is totally contrary to the scheme of the Act.”

6. In any event, the assertion by the Petitioners that they continue to remain in possession of the land in question or that compensation was not tendered gives rise to a disputed questions of fact. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

7. 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.”

8. The above decision was re-affirmed by the judgment of a 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 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.”

9. The above observations have been followed by this Court in several orders including the order dated 17th January, 2019 in WP(C) No. 4528/2015 (*Mool Chand v. Union of India*) and similar petitions have been dismissed on the ground of laches.

10. 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.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 21, 2019

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