

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

34

+

W.P.(C) 1667/2015 & CM 2984/2015

SANDHYA EDUCATIONAL SOCIETY (REGD.)

..... Petitioner

Through: Mr Rajiv Kumar Ghawana and Mr
Akshita Chhatwal, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr Siddharth Panda, Advocate for
LAC/L&B.

Mr Dhanesh Relan, Standing Counsel
for DDA with Mr Rajeev Jha and Ms
Komal, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

%

30.01.2019

Dr. S. Muralidhar, J.:

1. The prayers in the petition read as under:

- “a) issue a writ, order or declaration declaring that the entire acquisition proceedings i.e. section 4 notification dated 22.12.1987, Section 6 declaration dated 29.1.1988 and award no.25/1989-90 dated 23.1.1990 in respect of Petitioner's land in khasra no. 401 admeasuring 4 bigha 03 biswa situated in the Revenue Estate of Village Ghonda Gujran Khadar, Delhi have lapsed in view of sub section 2 of section 24 of "THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND

RESETTLEMENT ACT, 2013"; and
OR IN THE ALTERNATIVE;

- b). b) issue a writ, order or declaration declaring that the petitioner is entitled to the benefit of the proviso to sub-section 2 of section 24 of "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in respect of property bearing Khasra No.401 admeasuring 4 bigha 03 biswa situated in the Revenue Estate of Village Ghonda Gujran Khadar, Delhi
- c) Issue writ of certiorari quashing Award No.25/1989-90 dated 23.1.1990 .passed by respondent no.2 in respect of property bearing Khasra no.401 admeasuring 4 bigha 03 biswa situated in the Revenue Estate of Village Ghonda Gujran Khadar, Delhi; and
- d) Issue a writ of mandamus directing the concerned authorities, including respondent no.2 to pass a fresh award in respect of the property bearing Khasra no.401 admeasuring 4 bigha 03 biswa situated in the Revenue Estate of Village Ghonda Gujran Khadar, Delhi in terms of the proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- e) Issue a writ of mandamus directing the concerned authorities, especially respondent no.2 LAC to. disburse the compensation amount based upon market value as mandated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- f) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The narration in the petition reveals that the Petitioner society entered into an agreement to sell on 19th December, 1987 with one Shri Amit Sharma, Shri Sandeep Singh and Shri Chander Kala for purchase of land measuring 4 bighas and 3 biswas in Khasra No.401 in Village Ghonda Gujran Shahdara, Delhi and that on payment of full consideration, the vendor delivered the actual physical vacant possession of the land to the Petitioner on the spot.
3. A notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') in respect of the aforementioned land came to be issued on 22nd December, 1987. Section 17 (1) and Section 17(4) of the LAA were also invoked. The acquisition was for the public purpose of the planned development of Delhi. The effect of the invocation of the Section 17 (4) of the LAA was that filing of objections under Section 5-A of the LAA was dispensed with.
4. The Petitioner preferred a writ petition being W.P.(C) No.3596/1987 in this Court questioning the invocation of Section 17 (4) of the LAA.
5. Meanwhile, on 29th January, 1988, a notification under Section 6 of the LAA was issued. This was followed by an Award dated 23rd January, 1990.
6. This Court dismissed W.P.(C) No.3596/1987 on 26th March, 2004 upholding the invocation by the Respondents under Section 17 (4) of the LAA.
7. Aggrieved by the above dismissal of its writ petition, the Petitioner filed SLP (Civil) No.8735/2004 in the Supreme Court.
8. The Petitioner states in paragraph 3 of the writ petition that the Supreme

Court permitted the Petitioner to withdraw the said SLP to enable the Petitioner to file a review petition before this Court. Thereafter the Petitioner is stated to have filed a CM No.5/2004 seeking recall of the order dated 26th March, 2004 of this Court in W.P.(C) No. 3596/1987. The Petitioner states that on 18th November, 2006, this Court dismissed the said application and rejected the prayer for review of the earlier order.

9. Aggrieved by the above order dated 18th November, 2011, the Petitioner filed SLP (Civil) No.2429/2012 in the Supreme Court. The said SLP, according to the Petitioner, was dismissed. No copy of the dismissal of the SLP has been enclosed with the petition.

10. The petition further narrates that the Land Acquisition Collector ('LAC') on 15th October, 2011 made a reference under Section 30-31 of the LAA to the Court of the learned Additional District Judge ('ADJ'), which was numbered as LAC No.62/2011. The Petitioner further states that it appeared before the ADJ, and filed a statement of claim. Thereafter, it is stated in paragraph (4) that since no one appeared for any of the interested parties in the said reference proceedings, the proceedings were adjourned *sine die* by an order dated 11th December, 2012 with an opportunity to the interested parties to get it revived as and when they desired.

11. Thereafter, the petition refers to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act'), which came into effect on 1st January, 2014.

12. Mr. Rajiv Kumar Ghawana, learned counsel for the Petitioner, urged that the Petitioner is entitled to seek a declaration/lapsing of the land acquisition proceedings under Section 24 (2) of the 2013 Act, since according to the Petitioner, the possession of the land in question remains with the Petitioner and compensation was also not paid. It is submitted further that notwithstanding the judgments of the Supreme Court in ***Mahavir v. Union of India* (2018) 3 SCC 588** and ***Indore Development Authority v. Shailendra* (2018) 3 SCC 412**, the Petitioner is still entitled to seek such a declaration under Section 24 (2) of the 2013 Act as, according to the learned counsel for the Petitioner, the correctness of the judgment ***Indore Development Authority v. Shailendra* (supra)** is itself pending before a Constitution Bench of the Supreme Court. Mr. Ghawana states that this would be the legal position notwithstanding that a similar submission has been rejected by this Court in a judgment dated 17th January, 2019 in W.P.(C) No.4528/2015 (***Mool Chand v. Union of India***).

13. It must be noticed here that on the facts narrated by the Petitioner in the petition, it is plain that there was an earlier round of challenge to the land acquisition proceedings by the Petitioner up to the Supreme Court on two occasions, which failed.

14. In its decision in ***Mool Chand v. Union of India* (supra)**, this Court considered the issue whether every one of the five issues answered by the three-Judge Bench of the Supreme Court in ***Indore Development Authority v. Shailendra* (supra)**, had in fact been referred to a Constitution Bench by the order dated 6th March, 2018 in ***Indore Development Authority v. Shyam***

Verma (2018) 3 SCC 405? This Court answered the said question in the negative holding that the reference to the Constitution Bench was as regards the conflict between the decisions in *Pune Municipal Corporation v. Harakchand Misirimal Solanki (2014) 3 SCC 183* and *Indore Development Authority v. Shailendra (supra)* on the issue whether deposit of the compensation amount in the revenue deposit ('RD') would tantamount to tendering of compensation, for the purposes of Section 24 (23) of the 2013 Act. This Court in *Mool Chand v. Union of India (supra)* held that the decision of the three-Judge Bench in *Indore Development Authority v. Shailendra (supra)* to the extent that it held that a petition seeking the relief under Section 24 (2) of the 2013 Act had to be filed in a reasonable time, was not referred to the Constitution Bench.

15. As further explained in *Mool Chand v. Union of India (supra)*, even assuming that the Petitioner is right in its contention that all of the five issues decided in *Indore Development Authority v. Shailendra (supra)*, have been referred to the Constitution Bench, the fact remains that while making such a reference, the Constitution Bench in *Indore Development Authority v. Shyam Verma (supra)* did not stay the operation of the judgment in *Indore Development Authority v. Shailendra (supra)*. Consequently, the judgment in *Indore Development Authority v. Shailendra (supra)* rendered by a Three-Judge Bench of the Supreme Court continues to hold the field till date and is binding on this Court.

16. In *Indore Development Authority v. Shailendra (supra)*, 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.”

17. Consequently, this Court is unable to accede to the prayers made by the Petitioner in the present petition. The petition is accordingly dismissed. The pending application is also disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 30, 2019

rd