

\$~

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

41

+ **W.P.(C) 2042/2016**

M/S JAI PRAKASH ASSOCIATES & LTD.

..... Petitioner

Through: Mr M.P. Bhargava, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Pawan Mathur, Standing Counsel
for DDA.

Ms Astha Tyagi, Advocate for LAC/
L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

21.01.2019

%

1.The prayers in the present 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 proceedings with respect to 7 Bighas land of the Petitioner comprised in Khasra No. 1882 & 1883, situated in the revenue estate of Village Malikpur Kohl @ Rangpuri, NCT of Delhi having lapsed and further quashing the impugned notification No.F.7(2)/86-L&B (i) dated 23.12.1986 issued under Section 4 and 17(1) &(3). Notification F.7(2)/86-L&B (ii), (iii) dated 24.12.1986 issued under Section 6 &17 of the Land Acquisition Act, 1894 and the Award No.28/87-88 dated 23.12.1987 with respect to .7 Bighas land of the Petitioner comprised in Khasra No. 1882 &1883, situated in the revenue estate of Village Malikpur Kohl @Rangpuri, NCT of Delhi.

AND

- (ii) Issue, a writ of certiorari and/or any other writ order or direction quashing the impugned actions of the Respondents in taking over the possession of the part of the 7 Bighas land of the Petitioner comprised in Khasra No. 1882 & 1883, situated, in the revenue estate of Village Malikpur Kohi @ Rangpuri, NCT of Delhi.

AND

- (iii) 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 7 Bighas land of the Petitioner comprised in Khasra No. 1882 & 1883, situated in the revenue estate of Village Malikpur Kohi @ Rangpuri, NCT of Delhi.
- (iv) issue a writ of mandamus and/or any other writ, order and direction of the similar nature issuing directions to the Respondents to handover and return the possession of the part of the 7 Bighas land of the Petitioner comprised in Khasra No. 1882, & 1883, situated in the revenue estate of Village Malikpur Kohi @ Rangpuri, NCT of Delhi, the possession of which have been illegally taken over by the Respondents.
- (v) pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice.

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 23rd December 1986, followed by the notifications under Sections 6 and 17 LAA on 24th December, 1986. The impugned Award No. No.28/87-88 was passed on 23rd December 1987 for acquisition of land in question for public purpose of

rehabilitation of displaced persons on account of the expansion of Palam Airport in Delhi.

3. According to the Petitioner, the ownership of the land in question was mutated in the name of the present Petitioner Company, which was earlier known by other names. The last change of name was effected on 11th March, 2004. According to the Petitioner, despite invoking Section 17 of the LAA, the land in question was not acquired for any purpose and the Respondents have also failed to pay any compensation to the Petitioner. It is stated that no amount was also deposited in the Court under Section 31 of the LAA. It is further asserted that only part possession of the land in question was taken.

4. In paragraph 8.8 it is stated that the acquisition proceedings were challenged in W.P.(C) No.172/1987 and that was finally dismissed by this Court.

5. It is thereafter stated that in view of the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act'), which came into effect from 1st January, 2014, the earlier land acquisition proceedings should be deemed to have lapsed in terms of Section 24 (2) of the 2013 Act.

6. A counter affidavit has been filed by the Delhi Development Authority ('DDA') on 3rd October, 2016, *inter alia*, pointing out that the Petitioner has not placed on record any document by which the Petitioner is claiming any right, title or interest. It is also pointed out that 2013 Act does not envisage return of land to the erstwhile owners. It is further pointed out in paragraph 5

(i) that the Petitioner is claiming to be in possession of the land measuring 7 *bighas* falling in *Khasra* Nos. 1882 and 1883 (5-9) in the revenue estate of Village Rangpur Kohi @ Rangpuri. However, as per the record, the subject land falls within the *Khasra* Nos. 1882 (3-01) and 1883 (4-08) in the said village. Therefore, the *locus standi* of the Petitioner to question the land acquisition proceedings itself is objected to. It is further submitted that the possession of the total land admeasuring 711 *bighas* and 13 *biswas* acquired under the Award No.28/87-88 was taken over and handed over to the International Airport Authority of India ('IAAI') on 19th January, 1987. Despite over two years having lapsed since the filing of the above counter affidavit, no rejoinder has been filed by the Petitioner. There is no attempt made in the petition to explain the delay by the Petitioner in approaching the Court for relief.

7. The Supreme Court has in ***Mahavir v. Union of India (2018) 3 SCC 588*** emphasised that the delay and laches would bar the Petitioner from seeking the relief of a declaration of 'deemed lapse' of the land acquisition proceedings under Section 24 (2) of the 2013 Act. This was reaffirmed by a Three-Judges Bench 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”

8. It must be noted here that the aforementioned issue regarding delay and laches has not been referred to a larger Bench by the Supreme Court in ***Indore Development Authority v. Shyam Verma*** and this legal position has been explained by this Court in its decision dated 17th January, 2019 in W.P.(C) No.4528/2015 (***Mool Chand v. Union of India***).

9. For all of the aforementioned reasons, the petition is dismissed on the ground of laches.

10. The status quo order dated 11th March, 2016, which was confirmed on 6th March, 2018 hereby stands vacated.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 21, 2019
rd