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

+ **W.P.(C) 1972/2015**

LAJPAT RAI GOEL

..... Petitioners

Through: Mr. Ravinder Sethi, Sr. Advocate with
Mr. Vishwaranjan Kumar, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel with
Ms. Jyoti Tyagi, Advocate for
LAC/L&B.

Mr. Ajay Verma, Sr Standing counsel
with

Mr. Gurmehar S. Sistani and

Mr. Sumit Mishra, Advocates for DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

24.05.2019

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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 21.3.2003, Section 6 declaration dated 19.3.2004 and the award no.12/2005-06/DC(NW) dated 5.8.2005 in respect of the land comprised in Khasra nos. 34/6 (5-2), 34/7 (4-0), 34/14 (4-16) and 34/4 (1-0) situated in the Revenue Estate of Village Barwala, 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

b) issue a writ of mandamus directing the respondents not to interfere with the peaceful possession of the said lands presently in possession and occupation of the petitioner.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 21st March 2003, followed by declaration under Section 6 of the LAA on 19th March 2004. The impugned Award No. 12/2005-06 was passed on 5th August 2005. The reason for the said acquisition was the public purpose of 'Rohini Residential Scheme' under the planned development of Delhi.

3. The Petitioner states that he is the owner of land in question having purchased it on 16th October 1989 by way of sale deeds. It is stated that the Petitioner has been cultivating the land continuously. The *khatoni* and *khasra girdawri* for the years 2011-12 and 2013-14 have been enclosed with the petition. A house tax receipt dated 28th March 2010 as well as the electricity bills for the year 2014 have also been enclosed along with the petition.

4. It is further mentioned in para 3 of the petition that the Petitioner previously challenged the acquisition proceedings in this Court by filing W.P(C) 13030 of 2005. The said writ petition was dismissed by order dated 9th July 2007. Subsequently, the Petitioner preferred SLP(C) 13056 of 2007 in which status

quo as regards the subject land was granted by an order dated 3rd August 2007. Thereafter, the petition straightaway refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter the '2013 Act'). The Petitioner submits that since physical possession remains with him and no compensation has been paid, the acquisition proceedings stand lapsed in terms of Section 24 (2) of the 2013 Act.

5. It is pertinent to note that the same land acquisition proceedings in respect of the land in the Revenue Estate of village Barwala, Delhi were challenged by a separate batch of Petitioners in a batch of writ petitions where the lead matter was W.P(C) 2501 of 2013 (*Naresh Kumar & Ors. v. Union of India*). By a detailed judgment dated 17th April 2013, a Division Bench (DB) of this Court dismissed the writ petitions inter alia holding as under:

“We, at the inception, put to learned senior counsel for the petitioners as to why and how can we permit a settled position to be unsettled after a decade. This is so as the petitioners chose to remain silent when the acquisition proceedings were initiated, accepted the same, took compensation and sought references for enhancement of compensation. The aforesaid facts have to be examined in the conspectus of the purpose for which the land was acquired which was planned development of Rohini Residential Scheme. In Delhi there has been large scale acquisition by the DDA which was originally the only authority which was engaged in development of land and meeting the housing needs of the people. No doubt in this process while large tracts of land were acquired, some land remain

undeveloped and the DDA could not protect its land pool with the result encroachment took place. These encroachments have been on such a massive scale with practically no prevention that a large part of habitants of Delhi reside in these colonies. The Government has come up now with schemes of regularization of these colonies.

Rohini Residential Scheme like other schemes is in the nature of a mini township. Such a mini township will contain all the essential features, i.e. residential areas, commercial areas, institutional areas. Thus, while there will be development of residential plots, there would also be development of commercial areas to take care of the needs of residents. These may be shopping arcades or there may be hotel sites, etc. Similarly there would be institutional requirements like for purpose of schools, hospitals, community facilities, etc. If land is allotted for all these purposes it cannot be said that the purpose of acquisition has disappeared or there is mala fide exercise of the power of acquisition. The DDA would spend large amount of monies on development of the area and, thus, to have a transparency auction is often the method, adopted for allotment, at least, with commercial areas while in case of residential areas there may be auction of plots or particular schemes under which plots and flats are allotted. It may be possible even to allot land to certain societies for their needs. Similarly hotel sites and commercial buildings are often auctioned.

We are, thus, of the view that the nature of allegations made in this writ petition cannot be said of such a nature as to suggest that there is a mala fide exercise of power or improper use of the land, which has been acquired.

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We are of the view that the petitioners cannot after such a long period seek to rake up the issue of acquisition merely on the basis of some recent pronouncements by the Hon'ble Supreme Court even

when they accepted the compensation qua acquisition of the land by neither challenging the acquisition proceedings nor the award but on the other hand were only interested in enhancement of compensation for which they have sought a reference. They have also recovered the compensation and for them now to say that they are willing to return that compensation after number of years and should be permitted to assail the acquisition proceedings would not, in our view, be the appropriate direction to be passed.

In view of these facts and circumstances, we are not inclined to entertain the petition seeking to challenge the acquisition proceedings both on grounds of delay and laches as also on account of the acquiescence and conduct of the petitioners qua the acquisition proceedings.

Dismissed.”

6. On 3rd February 2015 the Supreme Court of India passed the following orders in SLP (C) No. 17121/2013 (*Naresh Kumar v. Union of India*) and a batch of special leave petitions (SLPs), all of which were directed against the above order dated 17th April 2013 of the DB of this Court in W.P. (C) 2501/2013 and batch. The order reads as under:

“SLP (C) Nos. 17121, 33188 of 2013 & SLP (C) 17482, 13358 of 2014

Shri T. N. Singh and Dr. Surat Singh, learned counsels for the Petitioners in respective matters on instructions, seek permission of this Court to withdraw these petitions.

Permission sought is granted.

The special leave petitions are disposed of as withdrawn.

Contempt Petition (S) No. 319 of 2013 in SLP (C) 17121 of 2013

In view of the withdrawal of the special leave petition, nothing survives for consideration and decision in this contempt petition. The contempt petition is dismissed in terms of the signed order.”

7. Thus no liberty was granted to the Petitioners in the above matters to challenge the land acquisition proceedings afresh. The order dated 17th April 2013 passed by the DB of this Court in ***Naresh Kumar*** (*supra*) rejecting the challenge to the land acquisition proceedings *qua* the lands in village Barwala for the Rohini Residential Scheme attained finality.

8. In the counter affidavit filed by the LAC, it is stated that the present petition is liable to be dismissed on the ground of delay and laches as the acquisition proceedings attained finality in the year 2005-06 itself. It is stated that pursuant to the impugned Award No.12 /2005-06 being passed, possession of the subject land could not be taken due to the stay order passed in W.P(C) 13030 of 2005, which came to be dismissed on 9th July 2007. Thereafter, an order granting status quo in respect of the subject land was passed in SLP(C) 13056 of 2007 which continued till the date of dismissal of the SLP i.e. 11th February 2015. It is further stated that “compensation could not be paid and the same is lying deposited in RD.”

9. In the counter affidavit filed on behalf of the DDA, it is stated that the Petitioner has not been able to place any document showing him to be the

recorded owner of the subject land, and reliance on typed sale deeds, *khatoni* and *khasra Girdawri* to show any right or title over the subject land is misplaced. It is stated that subsequent to the passing of the impugned Award No.12/2005-06/DC/NW on 5th August 2005, the physical possession of the said land was handed over to the DDA by the LAC/L&B Department on 17th July 2007. A copy of the possession proceedings has been annexed along with the affidavit. As regards compensation, it is stated that “DDA remitted to L&B Deptt. Rs. 1,19,35,05,048/- vide Cheque No.339383 dt. 9.9.2005; Rs. 1,00,00,00,000/- vide Cheque No.074382 dt. 9.9.2005 and Rs. 76,00,00,000/- vide Cheque No.81369 dt. 17.11.06, with total compensation paid by DDA to L&B Deptt. is Rs. 3,02,35,05,048/- against Award No.12/2005-06/DC/North.”

10. In the rejoinder filed by the Petitioner to the counter affidavits filed on behalf of the Respondents, the averments made as regards the taking over of possession on 17th July 2007 as well as compensation having been released by the DDA have been denied. It is submitted that the reliance placed by the DDA on the above mentioned decisions in ***Naresh Kumar & Ors. v. Union of India*** (supra) is misplaced as is the reliance on the orders passed in ***Rahul Gupta v. DDA*** in SLP (C) Nos. 16385-88/2012 as the “DDA is carving out plots only in respect of the land, actual possession of which had been taken over and handed over to it and compensation paid to the land owners. However in the case of the petitioner neither the possession has been taken nor compensation paid.” The averments made in the petition itself have been further reiterated.

11. In the present case, the claim for relief of deemed lapsing under Section 24 (2) of the 2013 Act is on the ground that possession of the lands in question remains with the Petitioner. The stand of the LAC as well as the DDA in their respective regarding actual physical possession of the subject land has been questioned.

12. In this context, reference needs to be made to the orders passed by the Supreme Court on 10th March 2015, 28th January 2016 and 18th October 2016 in SLP (C) Nos. 16385-88/2012 (***Rahul Gupta v. Delhi Development Authority***) and in the interlocutory applications ('I.As') in the said SLPs. Although, in the order dated 10th March 2015, the Supreme Court referred to the acquisition of land for the Rohini Residential Scheme in Sectors 34, 35, 36 and 37, in the subsequent order dated 18th October 2016, it was made clear that the effect of the said order of the Supreme Court was to be applied to all the lands acquired for the Rohini Residential Scheme. In the order dated 18th October 2016 while disposing of various I.As in the aforementioned SLPs, the Supreme Court directed as under:

“Heard Mr. V. Giri, learned Senior Counsel appearing for the applicants and perused the interlocutory applications.

In view of the order dated 10.03.2015, passed by this Court in SLP (C) Nos. 16385-16388 of 2012, and a subsequent order dated 28.01.2016, passed in the same special leave petitions, the interim order passed by the High Court of Delhi on 04.3.2015 in W.P.(C)

No. 1915/2015 (Annexure A-4 in the instant interlocutory applications), is liable to be vacated, and is accordingly vacated.

We grant liberty to the Delhi Development Authority to produce a copy of this order **in all matters, pertaining to land acquisition relating to the Rohini Residential Scheme**, pending before the High Court, for vacation of similar interim directions.

It is made clear that in case the applicants have re-entered possession or otherwise, they shall vacate the said land and hand over its possession forthwith to the Delhi Development Authority, failing which it shall be assumed to be in possession of the Delhi Development Authority, after the expiry of ten days from the passing of the instant order.

With the aforesaid directions, these interlocutory applications stand disposed of.” (*emphasis supplied*).

13. These directions were repeated in the remaining I.As which were disposed of on the same date i.e. 18th October 2016. In effect therefore, the position is that if anyone still in possession of lands acquired for the Rohini Residential Scheme had not surrendered possession thereof to the DDA within ten days of the order dated 18th October 2016, then the possession thereof was deemed to be with the DDA. It would no longer be open to such persons to contend that actual physical possession of the lands in question remains with them.

14. In fact, on the basis of the above orders passed by the Supreme Court, the DDA filed an application being CM No. 41530 of 2016 for vacation of the

status quo ordered by this Court on 2nd March 2015. By an order dated 25th November 2016, this Court allowed the said application and vacated the status quo earlier granted.

15. It further requires to be noticed that in relation to the very same land acquisition Award No.12/2005-2006 passed on 5th August, 2005 in relation to lands located in the revenue estate of village Barwala, Delhi, a batch of writ petitions was filed afresh after the passing of the 2013 Act, the lead matter in which was WP(C) No.7362/2016 (***Ravinder v. Union of India and Ors.***). By an order dated 25th March 2019, passed along the same lines as the present one, that batch of writ petitions was dismissed by this Court.

16. Mr. Ravinder Sethi, learned Senior counsel appearing on behalf of the Petitioner, pointed out that in the present case, SLP (C) No. 13056/2007 was filed by the present Petitioner challenging the dismissal of his W. P. No. 13030/2005 by this Court on 9th July, 2007. In the said SLP by an order dated 3rd August, 2007 the Supreme Court had directed status-quo to be maintained. After the 2013 Act was enacted, the Petitioner filed application I.A No.4 of 2014 in the Supreme Court for a direction to the Respondents to de-notify the land in question. A reference was made in the said application to the judgment of the Supreme Court in ***Pune Municipal Corporation v. Harakchand Misrimal Solanki (2014) 3 SCC 183.***

17. SLP (C) No. 13056/2007 filed by the present Petitioner challenging the dismissal of his W.P. No. 13030/2005 by this Court on 9th July 2007, came up for hearing before the Supreme Court along with a batch of other SLPs on 11th February, 2015. The order passed in the SLPs reads as under:-

“Delay, in filing and refiling the special leave petition (s), if any, is condoned.

Delay in filing the application(s) for substitution, if any, is condoned.

Application (s) for substitution, if any, is/are allowed.

Application(s) for impleadment is/are rejected.

Heard learned counsel for the parties to the *lis*.

We do not see any good ground to interfere with the judgment and order passed by the High Court. Accordingly, the special leave petitions are dismissed.

However, we grant liberty to the petitioners, if they may so desire, to make appropriate application(s) as provided under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, or under Section 48 of the Land Acquisition Act, 1894, before the appropriate forum/High Court within one month from today, as applicable in the facts of respective cases before us, if not already filed.

The application(s)/representation(s) which have already been filed before the Government of N.C.T. of Delhi and have been decided by the authority, the decision shall be communicated to the applicant(s)/petitioner(s) within one month's time from today, if not

already communicated to them.

The application(s)/representation(s) which are pending with the Government of N.C.T. of Delhi and have not yet been decided, the authority after taking an appropriate decision, within two months' time from today, shall communicate the same to the applicant(s)/petitioner(s) within one months' from the date of taking such decision.

The application(s)/representation(s) by the petitioners which are now to be filed shall be filed within one month's time from today and those application(s) shall also be decided in accordance with law within two months' time from the date of filing of those application(s) and the authority after taking such decision shall communicate the same to the applicant(s) within one month's time from the date of taking the decision.”

18. Thus, the Special Leave Petition(s) were dismissed and the order dated 9th July, 2007 of this Court was affirmed by the Supreme Court. While liberty was granted to the Petitioners to make appropriate applications either under Section 24 (2) of the 2013 Act or Section 48 of the LAA before the High Court, the Supreme Court did not express any opinion on whether the Petitioners were entitled to that relief. After the above order was passed, the present writ petition was filed by the Petitioner on 24th February, 2015.

19. The contention of Mr. Sethi is that the present writ petition could not be said to be barred by laches since the Petitioner had a valid explanation for not filing the writ petition earlier. Accordingly, he sought to submit that the

decision of the three-Judge Bench of the Supreme Court in ***Indore Development Authority v. Shailendra (2018) 3 SCC 412*** would not come in the way of the Petitioner being granted relief.

20. The Court is unable to agree with the above submission. As already pointed out hereinbefore, since the acquisition of the lands in question was for the public purpose of the Rohini Residential Scheme, the orders passed by the Supreme Court in ***Rahul Gupta v. DDA (supra)*** as regards possession would govern the present proceedings as well.

21. As regards the plea concerning the validity of the acquisition proceedings, the Petitioner failed in the earlier attempt to challenge those proceedings with the dismissal of SLP(C) No.13056/2007 by the Supreme Court by the order dated 11th February, 2015. In the circumstances, as regards the further challenge to the land acquisition proceedings, the following observations in ***Indore Development Authority v. Shailendra (2018) 3 SCC 412*** would be relevant:

“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 negated 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.

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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.”

22. Mr. Sethi then referred to a whole series of judgments including ***Pune Municipal Corporation v. Harakchand Misrimal Solanki*** (*supra*) and submitted that since the 2013 Act came into effect only from 1st January, 2014, a fresh cause of action arose to enable the Petitioner to again question the land acquisition proceedings.

23. This Court is unable to agree with the above submission for the reason that the decision in ***Indore Development Authority v. Shailendra*** (*supra*) makes it clear that Section 24 (2) of the 2013 Act cannot be used to invalidate judgments/orders of the Courts whereunder “rights/claims have been lost/negated.”

24. Mr. Sethi then argued that the correctness of the judgement in ***Indore Development Authority v. Shailendra*** was itself referred to a Constitution Bench of the Supreme Court and therefore is no longer good law. This Court is unable to agree with the above submission as well. 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 only 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 or where in earlier rounds of litigation “rights/claims have been lost/negated.” This legal position was explained by this Court recently in *Mool Chand v. Union of India 2019 (173) DRJ 595 DB*.

25. For all of the aforementioned reasons, the Court finds no merit in this petition and it is dismissed as such.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 24, 2019

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