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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**W.P.(C) 2137/2016 & CM APPL. 22532/2019 &
CM APPL. 22533/2019**

RAM KUMAR & ORS.

.... Petitioners

Through: Mr. N.S. Dalal and Ms.
Suman Chaudhary, Advocates

versus

GOVT. OF NCT OF DELHI & ORS.

.... Respondents

Through: Mr. Sachin Nawani,
Advocate for Respondent No.1 & 2.
Mr. Mohit Aggarwal, Advocate for
Respondent No.3 & 4.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

24.07.2019

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CM APPL. 22532/2019

1. For the reasons stated therein, the application is allowed. The order dated 23rd April, 2019 is recalled. The writ petition is restored to file.

W.P. (C) 2137/2016 & CM 22533/2019 (for stay)

2. The prayer in the present petition reads as under:

“(A) Issue, an appropriate writ(s), order(s) or direction (s) declaring the entire acquisition proceedings in respect of the land of Petitioners

comprising in Khasra Nos. 82//2 min (0-02), 3/2min (0-04), 4/2min (0-04), 5/1 min (0-03), 5/2 min (0-01), 119/7 min (0-03), 14min (0-04), 17min (0-04), 24 /2min (0-01), 24/3min (0-03), 126/4/2min (0-04), 7min (0-04), 14min (0-04), 17min (0-04), 24min (0-04), 128//1min (0-04), 2min (0-04), 3min (0-04), 4min (0-04), 17min (0-04), 129/ /1/2min (0-04), 2/2min (0-04), 3min (0-04), 4min (0-04) total measuring 4 Bighas 8 Biswas situated in the Revenue Estate of village Jharoda Kalan, District- South-West, New Delhi initiated vide notification bearing No.F.7(2)/86-L&B (2) dated 17.08.1988 issued under Section 4 of the Land Acquisition Act, 1894 and all subsequent proceedings to have lapsed in view of section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.”

3. The background facts are that the land in question i.e. 4 *Bighas* 8 *Biswas* comprised in the aforementioned Khasras all situated in the Revenue Estate of Village Jharoda Kalan, New Delhi (hereafter, ‘subject land’), was notified under Section 4 read with Section 17 (1) of the Land Acquisition Act, 1894 (‘LAA’) on 29th July, 1988 for the public purpose of “construction of Jharoda Kalan Link Drain to carry the village dirty waste water into main Mungeshpur Drain under the Scheme of Planned Development of Delhi”. This was followed by a declaration under Section 6 of the LAA dated 17th August, 1988. The Land Acquisition Collector (LAC) passed an Award No. 4/90-91 on 27th July, 1990.

4. As far as the Petitioners are concerned, it is stated that the “Petitioners and their predecessors-in-interest are/were the recorded owners” of the subject land. A copy of the *Khatauni* has been annexed with the petition. It is averred that only paper possession was taken on 23rd March, 1988 and that actual physical possession of the subject land remains with the Petitioners. It

is further averred compensation for the acquisition of the subject land has not been paid or offered to either the Petitioners or their predecessors-in-interest. Reference has also been made to the proceedings before the Public Grievances Commission (PGC), which the Petitioners are stated to have approached when the Respondents refused to take any action in response to their plea under Section 48 of the LAA for de-notification of the subject land. A copy of the order of the PGC has been annexed with the petition. Thereafter, the petition straightaway refers to the enactment of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') and the Petitioners' entitlement to a declaration of deemed lapsing under Section 24 (2) on the ground that neither has possession of the subject land been taken nor has compensation been paid.

5. Counter affidavits have been filed on behalf of the LAC and the Irrigation and Flood Control Department. In the counter affidavit filed on behalf of the LAC, it is averred that possession of the subject land was taken on 23rd September, 1988. As regards compensation, it is averred that as per records, notices under Section 12 (2) and 31(1) of the LAA were issued on 14th September, 1990 by the LAC to Shri Dig Ram, Smt. Maya Devi, Shri Attar Singh and Shri Nand Ram for receiving compensation amount. It is further averred that as per statement 'A' compensation of a sum of Rs.440.26 for 7 *Biswas* of the subject land was paid to Smt. Maya Devi on 25th September, 1989 and that a further compensation of Rs.4,025.22 was assessed to the Gram Sabha in respect to the Khasra Nos. 129/2/2 min (0-04) and 129/2/3min (0-04) total admeasuring 8 *Biswas* of land. It is also averred

that the petition gives rise to disputed questions of fact. In the counter affidavit filed on behalf of the Irrigation and Flood Control Department, it is averred that the compensation for 4 *Bighas* 8 *Biswas* of the subject land was paid to the LAC on 31st July, 1987. It is further averred that demarcation of the subject land was done in February, 2016 and that construction work could only be partly carried out due to encroachment on the said lands by private persons.

6. Rejoinders have been filed on behalf of the Petitioners to aforementioned affidavits. In the rejoinder to the counter affidavit of the LAC, it is averred that “only Rs.440.26 was paid to Smt. Maya Devi and rest of amount was not received by any of the claimants except the Gaon Sabha.” The rest of the averments in the counter affidavit of the LAC have been denied and the contents of the writ petition have been reiterated. In the rejoinder to the counter affidavit of the Irrigation and Flood Control Department, the averments in the counter affidavit have been denied and the contents of the writ petition reiterated.

7. By an order dated 20th November, 2018 this Court directed the LAC to answer the following queries posed by it:

“(i) whether the notice purportedly issued under Sections 12 (2) and 31 (1) of the Land Acquisition Act 1894 was issued to and served on the Petitioners, who are admittedly recorded owners as averred by them in para 5 and not disputed by the LAC and in fact admitted by the LAC Department in the respective counter-affidavit;

(ii) whether the compensation amount was tendered to the 15 Petitioners;

(iii) whether all or any of them refused to receive the compensation;

(iv) whether the record of the LAC actually reflects the above three facts, i.e. service of notice, tendering of compensation, and refusal to receive compensation; and

(v) whether, thereafter, the compensation amount was deposited with the treasury of the Government or in the Court.”

8. On 1st February, 2019 the LAC filed an additional affidavit setting out the following responses to the aforesaid queries. In reply to query (i) it is stated that “notices were issued to 43 person interested and the same was sent by post as mentioned on the notice itself” and that “there is no receipt of acknowledgement available on record. However, 10 persons acknowledge the information of announcement of the award on 27.7.1990. These 10 persons gave their acknowledgement against 12 person interested. Therefore at least these persons had the knowledge of the announcement of the award”.

9. In reply to query (ii), it is stated that “the Land Acquisition Collector had issued notices u/s 12(2) & 31 of the Act to 43 interested persons to receive compensation, however as per statement 'A' Smt. Maya Devi D/o Ranjku came to receive the compensation to the tune of Rs.440.26 on 25.9.1989 in respect to 7 Biswas of land.” In reply to query (iii), it is stated that “the interested persons who were informed about the announcement of award or had knowledge by virtue of the notice u/s 12(2) Of the Act did not turn up to

receive the compensation have impliedly refused to accept the same thus now cannot take benefit of their own wrong that too at this belated stage.”

10. In reply to query (iv), it is stated that “the record of the LAC actually consists of Award, Naksha Muntazamin, Statement 'A' etc. In this particular matter the records of notice U/s 12(2) was sent to the recorded owner by post. Page No. 3 of the Award mentioned the calculation of detailed compensation including the 80% compensation calculated at old rate having been tendered to the beneficiaries. There is no record available in the Award file of refusal from the concerned beneficiaries”.

11. In reply to query (v), it is stated that “as per records available in the office of the Land Acquisition Collector, according to the Naksha Muntazamin 80% of the compensation amount calculated on the basis of old rate has been given. The remaining balance of compensation, as per the record has not been sent to the reference court u/s 30-31 of the Act nor it has been deposited in the Revenue Deposit (RD).”

12. In view of the above stand of the Respondents, based on the records available with them, the assertion of the Petitioners that they continue to be in possession of the subject land and have not been paid compensation gives rise to disputed questions of fact. These cannot possibly be examined in the present petition.

13. The fact further remains that there is no explanation anywhere in the petition for the inordinate delay in approaching the Court for relief. On the

aspect of laches, in ***Indore Development Authority v. Shailendra* (2018) 3 SCC 412** a three Judge Bench of the Supreme Court of India observed as under:

“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.”

14. 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 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* (2014) 3 SCC 183** regarding the tendering of compensation, and 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 its decision in ***Mool Chand v. Union of India* (2019)173 DRJ 595 (DB)**.

15. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 11th March, 2016 as confirmed on 23rd May, 2018 hereby stands vacated. The application for stay is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 24, 2019

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