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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2141/2017

SURAJ NARAIN & ORS.

....Petitioners

Through: Ms. Pooja Wason, Advocate

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Sanjay Kumar Pathak, Mr.
Sunil Kumar Jha and Mr. M.S.
Akhtar, Advocates for LAC &
DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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23.07.2019

1. The prayers in the present petition read as under:

“(a) issue a writ/order/direction in the nature of certiorari calling for the records of the acquisition proceedings in respect of land comprising in Khasra No.36/1/2 (2-9),36/2/1 (4-15) and 36/3/1 (3-12) total measuring 10 Bighas16 Biswas situated at Village Jharoda Mazra, Burari, Delhi, acquired vide award No.40/1979-1980 dated 22.03.1980;

(b) issue appropriate writ, order or direction declaring the acquisition proceedings in respect of land comprising in Khasra No.36/1/2 (2-9), 36/2/1 (4-15) and 36/3/1 (3-12) total measuring 10 Bighas 16 Biswas situated at Village Jharoda Mazra, Burari, Delhi having lapsed and have become inoperative after the coming into force of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation & Resettlement Act, 2013;

(c) award the cost of the present proceedings in favour of the petitioners.”

2. The background facts are that the land in question i.e. 10 *Bighas* 16 *Biswas* comprised in Khasra Nos.36/1/2 (2-9), 36/2/1 (4-15) and 36/3/1 (3-12) in village Jharoda Mazra, Burari, Delhi (hereafter, ‘subject land’) was notified under Section 4 read with Section 17 (1) of the Land Acquisition Act, 1894 (‘LAA’) on 15th February, 1979 for the public purpose of the “Construction of Supplementary Drain from G.T. Road to Wazirabad vide Delhi Administration”. A declaration under Section 6 of the LAA was issued on 15th February, 1979. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 40/79-80 on 22nd March, 1980.

3. As far as the Petitioners are concerned, it is stated in the petition that the Petitioner Nos. 1 & 2 and one Late Shri Anil Kumar are the sons of one Shri Ramesh Chand, whose brother Shri Arya Dutt “had 1/3rd undivided share” and executed a will bequeathing his movable and immovable property to the Petitioner No. 1 & 2 and Shri Anil Kumar before his death on 3rd February, 2005. It is stated that Petitioner No. 3 is the son of the Late Shri Anil Kumar.

4. It is averred in the petition that the Petitioners continue to be in physical possession of the subject land and that only paper possession was taken on 23rd March, 1979. It is stated that a boundary wall was raised by the Irrigation and Flood Control Department, Government of

NCT of Delhi and that the subject land was left out and till date remains outside the boundary wall erected by the Irrigation and Flood Control Department. It is further averred that pursuant to a complaint as regards the “illegal sale of land belonging to the Government”, demarcation was initiated by the Revenue Department and conducted “in the presence of all concerns”. It is averred that at that point it was found that possession had not been taken. A translated copy of the demarcation report has been enclosed with the petition.

5. It is further averred that neither Petitioners nor their predecessors-in-interest have been paid compensation till date. Thereafter, the petition refers to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (‘2013 Act’) and the Petitioners’ entitlement to declaration of deemed lapsing under Section 24 (2) of the said Act on the ground that the Petitioners continue to be in possession and have not been paid any compensation.

6. A counter affidavit has been filed by the LAC where it is averred that possession of the said land has been taken and the fact thereof has been recognized in the Award itself. It is further averred that compensation of a sum of Rs.1,84,284.30 was paid to one Shri Bhudev on 3rd April, 1980. It is averred that the petition is barred by delay and laches and that it must, therefore, be dismissed.

7. No rejoinder has been filed by the Petitioners to the counter affidavit of the LAC. Be that as it may, the assertion of the Petitioners that they continued to remain in possession and have not been paid compensation gives rise to disputed questions of fact, which cannot be examined in the present petition. The fact further remains that the Petitioners have not advanced any explanation for the inordinate delay in approaching the Court for relief.

8. 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 become 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. 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)*.

10. For the aforesaid reasons, the writ petition is dismissed. The interim order dated 8th March, 2017 as confirmed by this Court on 13th February, 2018 stands hereby vacated.

S.MURALIDHAR, J.

TALWANT SINGH, J.

JULY 23, 2019
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