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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3788/2018 & CM 14995/2018

MAHENDER PAL AND ORS.

.....Petitioners

Through: Mr. Om Dutt Sharma, Ms Meena
Moli and Mr Jagdish, Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr Yeeshu Jain and Ms Jyoti Tyagi,
Advocates for LAC/L&B.

Mr Anupam Srivastava, ASC
(GNCTD) with Ms Swati Singh,
Advocate.

Mr Jagdeep Kumar Sharma, ASC for
R-3 with Mr Deepankar Sondhi,
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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15.05.2019

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

“(i) issue a Writ of Mandamus or any other Writ or order or direction declaring the entire acquisition proceedings vide Award No.7/97-98, in respect of the land of Petitioners along with other co-owners falling in Khasra Nos. 732 (12-06), 4023/733 (27-19); 4026/2785/734 (00-19), 4027/2785/734 (36-13) total ad measuring 77 Bighas 8 Biswas situated in Revenue Estate of Village – Basai Darapur, New Delhi, under the Land

Acquisition Act, 1994 to have lapsed in view of the Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(ii) In the alternative, the Hon'ble Court may graciously be pleased to issue an appropriate direction or order thereby directing the Respondent No.4 to implement the policy Guidelines approved by the Hon'ble Lt. Governor of Delhi in Lhe Minutes of Meeting of Senior Officers of D.D.A. held on 21.07.2009 for laying I out plan prepared with 50 sq. yds. Plots and a park etc. for people whose houses were demolished by the D.D.A. in 2002 pertaining to the land in the abadi of Basai Darapur and acquired vide Award No. 7/97-98 within a fixed time schedule for ultimate rehabilitation and resettlement of the Petitioners.”

2.The narration in the present petition shows that in respect of the acquisition of the lands in question, a notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') came to be issued on 13th November, 1959. This was followed by a declaration under Section 6 LAA on 28th January, 1966. This was followed by Award No.7/97-98 passed on 12th December, 1997.

3. The Petitioners who are five in number claimed to have “undivided interest over entire and every parcel of the land in question along with other co-owners”. According to the Petitioners, their forefathers were co-owners in possession of the land in question for more than 20 years and the revenue record reflected this, as part of 'Shamlat Patti Tagal' meaning 'joint ownership of Tyagies'. Copy of the *khasra girdawari*, is enclosed with the petition.

4. It is then stated that some of the co-owners challenged the land acquisition

proceedings by filing W.P.(C) No.1653/1984 (*Om Prakash Tyagi v Union of India*) in this Court. The said writ petition came to be dismissed by this Court on 14th December, 1995 with the observation that the Petitioners were at liberty to make a representation to the Competent Authority seeking de-notification of the land in question. It is further stated that the Special Leave Petition filed by the co-owners against the said order, came to be dismissed by the Supreme Court.

5. The Petitioners claim that no compensation was received by any of them after passing of the Award. It is stated that in 2002, the Land Acquisition Collector ('LAC') (Respondent No.2) took physical possession of the land admeasuring 58 bighas and 10 biswas. Copy of the possession reports dated 31st January, 1st February and 2nd February, 2002 are referred to in paragraph 7 of the writ petition. It is, however, stated that the physical possession of the remaining land admeasuring 18 bighas and 12 biswas has not been taken and continues to remain with the Petitioners till date.

6. Even while the representation filed by some of the Petitioners and other co-owners were pending, they filed W.P. (C) 861/2002 (*Govind Prasad Tyagi v Govt. of NCT of Delhi*) and W.P. (C) 1122/2002 (*Jasbir Tyagi v Govt. of NCT of Delhi*). The said writ petitions were, however, dismissed by this Court. Some of the Petitioners gave another representation dated 26th May, 2009 for rehabilitation. According to the Petitioners, the Lt. Governor ('LG') at a meeting convened on 21st July, 2009 approved the policy for providing 50 square yards plots for people whose houses were demolished by the Delhi Development Authority ('DDA') (Respondent No. 3) in 2002

pertaining to the land in the *abadi* of Basai Darapur. It is stated that a committee was constituted to consider the claims, but none of the Petitioners were rehabilitated thereunder.

7. Thereafter, the petition narrates that the Right to Fair the compensation and Transparency in Land Acquisition & Rehabilitation and Resettlement Act, 2013 ('2013 Act') came to be enacted and became operational with effect from 1st January, 2014. It is claimed that the conditions laid down under Section 24 (2) of the 2013 Act having been fulfilled, the entire land acquisition proceedings should be deemed to have lapsed.

8. Notice was issued in the present petition on 18th May, 2018. On 12th November, 2018, the LAC filed its reply. On 14th November, 2018, this Court granted the DDA final opportunity to file its reply within four weeks and the matter was placed before the Registrar on 24th January, 2019 for completion of pleadings. Thereafter the matter was placed before the Registrar on 24th January, 11th April and 13th May, 2019. On none of those dates was counsel for the Petitioners present. Despite opportunities, the DDA did not file its reply and the matter was again placed before this Court today.

9. In the counter affidavit filed by the LAC, it is confirmed in paragraph 4 that out of the total land admeasuring 77 bighas and 8 biswas, possession of 58 bighas and 10 biswas was taken way back on 2nd February, 2002 and handed over to the DDA. As far as the remaining land, it could not be taken. A reference is made to the pendency of W.P.(C) No.4546/2015 (***Ramphal Tyagi v. GNCTD***) challenging the same acquisition proceedings.

10. It may be mentioned at this stage that the said writ petition being W.P.(C) No.4546/2015 came up for hearing before this Court along with two other writ petitions i.e. W.P.(C) Nos. 10884/2015 and 8102/2015 on 20th November, 2018. Interestingly, those writ petitions also concerned the acquisition of this very extent of 77 bighas and 8 biswas of land situated in the revenue estate of Village Basai Darapur in respect of which Award No.7/97-98 dated 12th December, 1997 was passed. In those writ petitions on 12th January, 2018, a direction was issued to all the Petitioners “to file affidavits to state as to whether they are competent to bind the other co-owners and as to whether they had any interest adverse with respect to the co-owners”. This was after the DDA in its reply pointed out that the Petitioners had not placed on record any document showing them to be owners of the lands in question. Further, they had not mentioned the details of the co-owners or made them parties to the writ petition.

11. Pursuant to the above direction of the Court issued on 12th January, 2018, the Petitioners in W.P. (C) 4546 of 2015 had filed affidavits stating that the lands in question were undivided and jointly owned by the deponent and other co-owners and, therefore, every deponent was having undivided interest over the entire and every parcel of the lands in question. The deponents stated that it had to be assumed that the consent of the co-owners had been taken.

12. This Court did not accept the said affidavits since they did not answer the specific query raised by the Court. Thereafter, the Court proceeded to observe in its order in W.P. (C) 4546 of 2015 as under:

“7. The complication that arises, as can be perceived by this Court, is that although, originally, it was noted in the Award passed by the LAC way back on 12th December 1997 that there were as many 216 claimants in respect of the land in question, the number of Petitioners/claimants before the Court in this batch of petitions, including those impleaded, would come to around 70. None of these claimants before the Court are able to reproduce any original record by way of any original entry in a Khasra Girdawari to show the extent of their right/interest/share in the lands in question.

8. At this stage, learned counsel for the Petitioners draws our attention to some of the photocopies of Khasra Girdawaris which are placed on the record. These, however, are of 1987 vintage and, as noticed are photocopies. Further, the Court has no assurance that the position as of today continues to be the same. In any event, from the side of the Respondents also, there is no assistance by production of the original record. Mr. Yeeshu Jain, learned counsel appearing for the LAC, states that Naksha Murtazami is not available for production.

9. In these circumstances, it is unsafe for the Court to proceed on the basis that the Petitioners/claimants have established their clear right/interest/share in the land in question on the basis on documents produced. The Court is of the view that each of the Petitioners/claimants must demonstrate, without doubt, on the basis of credible original documents forming part of an official record that they have an undisputed right/share/interest in the land in question to enable them to succeed in their prayers for declaration of the lapsing of the acquisition proceedings in respect of that particular right/share/interest in such land.

10. Accordingly, while granting liberty to each of the Petitioners/claimants to pursue their individual claims in respect of their respective shares/interest/right in the land in question in separate proceedings in accordance with law and in the manner indicated hereinbefore, these petitions are disposed of and the pending applications are also disposed of.”

13. Learned counsel for the Petitioners first sought to distinguish the present petition from those petitions. However, the Court finds that there is no distinction at all as far as the present petition is concerned. Not only is the relief claimed in relation to the same parcel of land, but it is also in relation to the identical land acquisition proceedings.

14. In the present case also, there is no clarity as to how the Petitioners are claiming any right, title or interest to the lands in question. The documents produced do not demonstrate their entitlement to any of the reliefs claimed in the petition. Further, the Court finds that there is no explanation whatsoever for the inordinate delay in approaching the Court for reliefs in relation to the land acquisition proceedings where the award was made way back on 12th December, 1997.

15. A further feature is that the earlier challenge to the land acquisition proceedings have themselves been dismissed by this Court, as has been disclosed in the petition by the Petitioners themselves. The following observations of the Supreme Court in *Indore Development Authority v Shailendra* (2018) 3 SCC 412 would apply on all fours:

“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.”

16. The above decision have been followed by this Court in several orders including *Mool Chand v. Union of India 2019 (173) DRJ 595[DB]* and similar petitions have been dismissed on the ground of laches.

17. The writ petition is accordingly dismissed, but in the circumstances, with no orders as to costs. The pending application is also dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 15, 2019

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