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

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W.P.(C) 2279/2016

KHUBI RAM

..... Petitioner

Through: Mr. Vishal Maan, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Bhuvnesh Satija with Mr.
Bhuvneshwar Singh Rathore for DDA
Mr. Siddharth Panda for L&B/LAC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

12.04.2019

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1. The prayers in the petition read as under:

“i. Issue of an appropriate writ, order or directions declaring the entire acquisition proceedings in respect the land of the petitioner to the extent of his 1/2nd share i.e. 2 bighas and 19 biswas comprised in Khasra no. 417 (5-17) total measuring 5 bigha and 17 biswas situated in Revenue Estate of Village Ghonda Gujran Khadar, Delhi, to have lapsed in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

ii. Pass any further order/s that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 24th October 1961,

followed by declaration under Section 6 of the LAA on 2nd September 1966. The impugned Award No. 9/1973-74 was passed on 5th June 1973. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the counter-affidavit filed on behalf of the LAC, it is submitted that the possession of Khasra No. 417(5-17) was taken over on 21st June 1973. It is also submitted that the Petitioner has not filed any revenue nor any title documents to support the contention that the Petitioners or their predecessors-in-interest were ever the recorded owners of the land. On the aspect of compensation, it is submitted that the compensation was deposited in the court of learned Additional District Judge.

4. In the counter-affidavit filed by the DDA, it is submitted that the petition is barred by delay and laches. It is further submitted that the subject land was acquired by the LAC on 21st June 1973 and handed over to the DDA. It is submitted that payment of compensation was made to the LAC through revolving fund.

5. It is only in the rejoinder of the Petitioner that he discloses that the land in question forms part of an unauthorized colony namely “Bhajanpura,C-Block, (Gali No. 1-5), Delhi-53”. This fact was not mentioned anywhere in the writ petition. On the website of the Department of Urban Development of the GNCTD, the complete list of unauthorized colonies in respect of which tentative application forms and tentative layout plans had been submitted and which are awaiting regularization has been put up.

Bhajanpura is one of those unauthorized colonies, which figures at S.No.18. Clearly, therefore, the property in question forms part of the unauthorized colony.

6. Apart from the fact that this petition is barred by delay and laches, no relief in terms of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 ('2013 Act') since admittedly the land in question forms part of an unauthorized colony.

7. This Court has in a series of orders, consistently held that where the property in question is part of an unauthorized colony, no relief under Section 24 (2) of the 2013 Act can be granted. The legal position has been summarized by the Court in ***Mool Chand v. Union of India 2019 (173) DRJ 595 (DB)*** where it was held in paragraphs 48, 49 and 50 as under:

“48. The third aspect of the case is that the Petitioner admits that the land in question is part of an unauthorised colony. The very basis for seeking regularisation of an unauthorised colony is that it is located on land which belongs either to the public or to some other private parties. The Petitioners would therefore not have the locus standi to seek a declaration in terms of Section 24 (2) of the 2013 Act in such cases since the very fact that they have sought regularisation on the basis that they are in unauthorised colony would be an admission that they do not otherwise have any valid right, title or interest in the land in question.

49. This Court has by order dated 19th December 2018 in WP(C) No.190/2016 (*Harbhagwan Batra v. Govt. of NCT of Delhi*) and order dated 8th January 2019 in WP(C) No.10201/2015 (*Gurmeet Singh Grewal v. Union of India*)

negatived similar pleas by the Petitioners who were trying to seek similar declaration of lapsing even while admitting that they were pursuing regularisation of an unauthorised colony.

50. In a decision dated 10th January 2019 in W.P. (C) 3623 of 2018 (*Akhil Sibal v. Govt. of NCT of Delhi*) this Court observed in this context as under:

“18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting regularization orders. A large portion of these colonies are by way of encroachment on public land, some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premise on which such regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those structures. That very basis gets contradicted as some of them try to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable.”

8. The above decision has been followed and the legal position has been reiterated by this Court in an order dated 25th January, 2019 in W.P.(C) No.3438/2015 (*Krishna Devi v. Union of India*).

9. On the aspect of laches, in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 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 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.

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 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.”

10. 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 (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. This legal position was explained by this Court recently in *Mool Chand v. Union of India (supra)*.

11. For the aforementioned reasons, the writ petition is dismissed. The dismissal of the present petition will not come in the way of the Petitioner pursuing the claim for regularisation of the unauthorised colony in question. The interim order dated 18th March 2016 passed by this Court which stood confirmed on 29th January 2018 stands vacated.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 12, 2019/tr