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

+ **W.P.(C) 2477/2016**

JAI BHAGAWAN & ORS.

..... Petitioners

Through: Mr. N. Prabhakar with Mr. Dhruv
Sharma and Mr. Saumya Das, Advocate

versus

LIEUTENANT GOVERNOR OF DELHI & ORS.

..... Respondents

Through: Ms. Shobhna Takiar for DDA
Mr. Yeeshu Jain, Standing Counsel and
Ms. Jyoti Tyagi for L&B/LAC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

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11.04.2019

1. The prayers in the petition read as under:

“a. Issue a writ in the nature of declaration declaring that the acquisition proceedings with respect to the agricultural land in the khasra no. 194 (0-19), Khasra no. 197(7-10) in the village Ladha Sarai have lapsed in terms of the section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013;

b. issue a writ of mandamus or any suitable directions to the respondents to restore the actual physical possession of the subject land in favour of the petitioners and make appropriate changes in the revenue record;

c. Or in the alternative issue a writ in the nature of mandamus

directing issuance of fresh notification for the acquisition of land and award compensation to the petitioners in terms of the provisions of the New Act i.e. the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) in respect of the land in question was issued on 13th November 1959, followed by declaration under Section 6 of the LAA on 6th January 1969. The impugned Award No. 27/1974-75 was passed on 28th March 1975. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. The Petitioners state that they are the legal heirs of the predecessor-in-interest who was in adverse and hostile possession of the subject land belonging to the persons of Muslim community since March 1947. It is stated that after Partition, some pockets of the said land were allotted to one Bhola Ram under the Displaced Persons (Rehabilitation and Resettlement) Act, 1954. The Petitioners have enclosed a copy of the Jamabandi which shows the predecessor as “*Gair Marusi*” or unauthorised occupant. It is further stated in para 14 that the predecessor of the Petitioners gave his representation to the LAC after a notice was issued under Section 9 of the LAA, whereby he stated that he had an undisputed interest in the property was cultivating the land in a hostile manner. It is stated that on 2nd May 1975 the LAC took over paper possession of the subject land and that the subject land is still lying vacant and unutilised.

4. In the counter affidavit filed on behalf of the LAC, it is submitted that the present writ petition is liable to be dismissed as neither the Petitioners nor their deceased father late Shri Jai Chand was the recorded owner of the subject land falling in Khasra Nos. 194 (0-19) and 197(7-10). It is submitted that the physical possession of the subject land was taken and handed over to the DDA on 2nd May 1975. On the aspect of compensation, it is stated in para 7 of the counter-affidavit that:

“The compensation for the subject land as per the Naksha Muntzamin there is no mentioning that whether compensation has been paid or not. As per the revenue records, since Reference 18 case was forwarded in this case, the Chattar Singh s/o Ganga Dass has filed the Reference Petition u/s 18 of Land Acquisition Act i.e. file no. F.13(40)775. And according to order of LAC dated 20.04.1977, a total compensation of central Govt. was reduced to Rs. 1513.75. Since Reference 18 case was forwarded in this case, it indirectly proves the compensation may have been paid to the parties.”

5. 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 as per the land records, the possession of land bearing Khasra No. 194(0-19),197(7-9) was taken over by the LAC on 2nd May 1975 and handed over to the DDA. It is further submitted that physical possession of Khasra No. 197(0-1) could not be taken due to 'built up area'. The DDA further transferred the subject land to the Horticulture Department for the purpose of Green Belt. On the aspect of compensation it is stated that an amount of Rs. 7,14,953.21/- was deposited in the ADJ's Court on 23rd November 1979 in respect of Award No. 27/1974-75.

6. No rejoinder has been filed by the Petitioners to the counter affidavit of the LAC or the DDA.

7. In view of the uncontroverted affidavits of the LAC and the DDA, the assertion by the Petitioners that they continue to remain in possession of the land in question or that they are entitled to compensation gives rise to disputed questions of fact which cannot be examined in these proceedings. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

8. On the aspect of laches, in *Mahavir v. Union of India (2018) 3 SCC 588* the Supreme Court has observed as under:

“23. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of

the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.”

9. The above decision has been reaffirmed by the judgment of the three Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 where 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 negatived 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 2019 (173) DRJ 595 DB*.

11. For the aforementioned reasons, the writ petition is dismissed both on the ground of laches as well as on merits, but in the circumstances, with no orders as to costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 11, 2019

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