

\$~34

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

+ **W.P.(C) 3036/2017**

RAJBIR

..... Petitioner

Through: Mr. V. S. Mehta, Advocate for Mr.
Ghanshyam Mishra, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.
Mr. Dhanesh Relan, Standing
Counsel DDA with Ms. Mrinalini
Sharma, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VINOD GOEL

ORDER

%

08.02.2019

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

“a) issue a Writ, order or declaration declaring entire acquisition proceedings i.e. Section 4 notification dated 13.11.1959, section 6 declaration is dated 14.06.1966 and award No. 54 OF 1969-70 DATED 30.03.1970 in respect of the land of the Petitioner comprised in and out of Khasra No.483 measuring 3 Bigha 3 Biswa, Khasra No. 484 measuring 2 Bigha 17 Biswa, Khasra No.485 measuring 1 Bigha 10 Biswa & in Khasra No.486 measuring 2 Bigha 2 Biswa situated in the Revenue Estate of Village Karkardooma, Delhi have lapsed in view of sub-section 2 of the section 24 of "THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013"; and

b) issue a writ of mandamus directing the respondents not to in

any manner whatsoever; interfere with the peaceful enjoyment and possession of the said lands presently in possession and occupation of the Petitioner; and

c) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The Petitioner claims that the recorded owner of the land question was his grandfather late Shri Chet Ram and that after his death, the land came into the hands, ownership and possession of his three sons who were Shri Ram Chander, Shri Raghubir and Shri Sohanlal. After the death of those three sons, the lands is said to have come to the respective shares of their sons. The Petitioner states that after the death of his father late Shri Ram Chander, he is in possession of land measuring about 7 bighas out of the said land. According to him, in the Award No. 54/69-70, the names of the aforementioned sons of Shri Chet Ram find mention. The Petitioner further states that he sought information under the RTI Act but was not informed of whether compensation has been tendered or paid to the recorded owners.

3. The narration in the petition reveals that the notification under Section 4 of the Land Acquisition Act, 1894 (LAA) was issued on 13th November 1959 followed by declaration under Section 6 LAA on 14th June 1970. The impugned Award No. 54/69-70 was passed on 30th March 1970. The narration then straightaway moves on to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') which came into force on 1st January 2014. The Petitioner claims that since actual physical possession of the land has not been taken and compensation also not been paid, the Petitioner is

entitled to a declaration under Section 24 (2) of the 2013 Act.

4. The Delhi Development Authority (DDA) (Respondent No. 3) has filed a counter affidavit on 1st February 2018 *inter alia* contending that the petition is barred by delay and laches. It is stated that actual physical possession of the land was taken over by the LAC and handed over to the DDA on 15th January 1971 and 31st August 1971. The possession proceedings have been enclosed with the affidavit. It also asserts in para 14 that compensation in respect of the land in question in village Karkardooma stands duly paid to the recorded owners. Till date no rejoinder has been filed by the Petitioner to contradict the above assertions.

5. From the above narration, it is plain that as regards the assertion of the Petitioner that the physical possession of the land is still with him, the counter affidavit of the DDA contends to the contrary and therefore gives rise to a disputed question of facts. Also with regard to compensation, it has been asserted by the DDA that compensation in respect of the subject land is not entered into the Payment Register because for the lands acquired prior to the year 1980, payment of the entire amounts of “acquired land used to be made by the L&H to the LAC at the time of the announcement of the award” and also that the “Petitioners are rank illegal encroachers of the government land and have absolutely got no right title or interest over the land”. With no rejoinder having been filed to the above counter affidavit, the issue compensation also becomes a disputed question of fact which cannot be examined in the present proceedings.

6. In any event, the petition is clearly barred by laches. There is no explanation why despite the award having been made way back on 13th March 1970, none of the predecessors-in-interest of the Petitioner or the Petitioner himself approached the Court for relief till the filing of the present petition.

7. 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 W.P.(C) 11645/2017 Page 8 of 9 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.”

8. The above decision has been re-affirmed in the judgment of the three Judge Bench 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 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 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.”

9. The above observations have been followed by this Court in several orders including the order dated 17th January, 2019 in WP(C) No. 4528/2015 (*Mool Chand v. Union of India*) and similar petitions have been dismissed on the ground of laches.

10. 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. The interim order dated 11th April, 2017 as confirmed on 29th January, 2018 is hereby vacated.

S. MURALIDHAR, J.

VINOD GOEL, J.

FEBRUARY 08, 2019

nk