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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2298/2017

RAMESH KUMAR RAINA

..... Petitioners

Through: Mr MP Bhargava, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr Arjun Pant, Advocate for DDA.

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

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VINOD GOEL

ORDER

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08.02.2019

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

“a. Issue an appropriate writ, order or directions declaring the entire acquisition proceedings in respect of the land admeasuring 240 square yards comprised property No.1079, Khasra no53/19 situated in the revenue estate of Village Karala, Tirthankar Nagar, Jain Colony, Delhi, including the notification bearing no. No.F.11(19)/2001/L&B/ LA/20112 dated 21.03.2003 issued under Section 4 of the Land Acquisition Act, 1894 and all subsequent proceedings to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation and Resettlement) Act 2013.

b. 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. According to the narration in the petition, it is seen that notification under Section 4 of the Land Acquisition Act, 1984 (‘LAA’) was issued on 21st March 2003 for the purpose of the Rohini Residential Scheme followed by declaration

under Section 6 LAA on 18th March 2004. The impugned Award No.22/2005-06/DC (N-W) was passed on 10th January 2006. It is submitted that on 26th October 1995, the Petitioner had purchased the land in question by an Agreement to Sell and registered Power of Attorney. It is further stated that the subject land is part of the Jain colony, Tirthankar Nagar which is an unauthorised colony. The status report dated 4th December, 2006 issued by the Additional District Magistrate, Kanjhawala has been enclosed. It is stated that the said report shows that:-

“the possession of the Jain Colony, Tirthankar Nagar, Delhi, was not taken because of built up, same comprises densely built up residential dwellings and included in list of 1071 unauthorized colonies and is pending for regularization.”

3. Thereafter the petition straightaway refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘2013 Act’) and that since compensation for the subject lands has not been paid, nor physical possession been taken, the acquisition proceedings stand lapsed.

4. In the counter-affidavit filed by the DDA, it is submitted that with the Petitioner not being the recorded owner of the land in question, he has no *locus* to file the present petition. Further as per the land record, the land bearing Khasra No.53/19 was acquired for public purpose and physical possession of the same was handed over to the DDA by the LAC/L&B Department on 23rd February, 2007, “after demolition”. It is submitted that the land was further transferred to RPD-1 for Rohini Residential Scheme on 18th July 2007. It is also stated “it was decided to keep the said Khasra No. out of fixation of the boundary of unauthorized colony i.e. Tirthankar Nagar Jain Colony, Karala.” As regards compensation, it is stated that an amount of Rs.104,06,06,716/- was sent by Cheque No.094622 dated 6th

June 2006 to the L&B Department against the said Award. A copy of the possession proceedings has been enclosed with the counter-affidavit.

5. In the counter-affidavit filed by the LAC, the above stand of the DDA in its counter-affidavit has been as regards the Petitioner not being the recorded owner of the land as well as the acquisition of the land and its subsequent handing over to the DDA. It is submitted that with possession being taken way back in 2007 and no challenge being made by the Petitioner till the present petition, it is barred by limitation. It is further stated that the contention of the Petitioner that he was not offered compensation is not tenable as he never submitted any documents to the LAC to claim any rights/title over the subject land.

6. No rejoinder has been filed by the Petitioner to either of the counter-affidavits filed by the Respondents.

7. There are several difficulties in the Petitioner being granted the relief prayed for in the petition. First, as regards the question of possession, in terms of the order dated 18th October 2016 of the Supreme Court in certain IAs in SLP (C) No. 16385-88/2012 (***Rahul Gupta v. DDA***) pertaining to the Rohini Residential Scheme, the DDA is deemed to be in possession of the lands in question acquired for that purpose. Therefore, the essential condition for a declaration for lapsing of land acquisition proceedings under Section 24 (2) of the 2013 Act is not fulfilled in the present case.

8. Added to this are two more difficulties in the way of the Petitioners. The first is that the petition is barred by 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. In *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 the three-Judge Bench of the Supreme Court, while re-affirming the above decision, 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 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.”

10. The second difficulty is that the admitted position is that the land in question is part of an unauthorised colony known as Tirthankar Nagar Jain Colony. This Court has consistently been refusing the declaration of deemed lapsing of land acquisition proceedings when the property in question is a part of unauthorised colony. In its order dated 10th January, 2019 in WP (C) No. 3630/2018 (*Akhil Sibal v. GNCTD*) this Court held as under:

“16. It appears that the Petitioners are pursuing parallel proceedings and seeking different reliefs in respect of the same lands in question – one is to seek regularization by contending that the building on the land in

question is part of an unauthorized colony, the other is to invoke Section 24 (2) of the 2013 Act, to seek lapsing of the land acquisition proceedings. In the considered view of the Court, the attempt at invoking Section 24 (2) of the 2013 Act is, in the circumstances, misconceived. Clearly, therefore, the present petitions are an abuse of the process of the Court where the facts speak for themselves.

17. Further, the manner in which the facts have been narrated, a relief under Section 24 (2) of the 2013 Act, is not even capable of being granted in either of the petitions. In similar circumstances, this Court had in its order dated 19th December, 2018 in W.P.(C) No.190/2016 ***R. Bhagwan Batra v. Government of NCT of Delhi***, rejected the prayers of the Petitioners where they were seeking a similar relief in respect of the land an unauthorized colony i.e. Guru Ramdass Nagar. The Court there has pointed out that the Petitioner should be pursuing their case for regularization.

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 is 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 a 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 tried 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.”

11. The above order was reiterated in the order dated 17th January, 2019 in W.P. (C) No. 4528 of 2015 (***Mool Chand v. Union of India***) and the order dated 6th February 2019 in W.P. (C) 11645 of 2017 (***Shri Desh Raj Arya v. Govt. of NCT of Delhi***).

12. Consequently, the petition is dismissed both on the ground of laches as well as on merits. The interim order dated 14th March 2017 as confirmed on 13th February

2018 is hereby vacated.

S. MURALIDHAR, J.

VINOD GOEL, J.

FEBRUARY 08, 2019