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

+ **W.P.(C) 4697/2014, CM APPLs.28793 & 30243/2019 (stay)**

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..... Petitioner

Through: Mr.Ritu Raj Biswas, Advocate.

versus

GOVERNMENT OF NCT OF DELHI AND ORS Respondents

Through: Mr.Yeeshu Jain, Standing Counsel for
L&B/LAC with Mr.Siddharth Panda
and Ms.Jyoti Tyagi, Advocates
Ms.Padma Priya with Ms.Soumya
Priyadarshinee, Advocates for NHAI.
Mr.Sanjeev Sagar, Standing Counsel
for DDA with Ms.Nazia Praveen,
Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
08.07.2019

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Dr. S. Muralidhar, J.:

1. The prayer in this writ petition is for quashing of the notification issued on 7th April 2006 under Section 4 of the Land Acquisition Act, 1894 ('LAA') and the consequential Award No.12/2008-09/SW dated 11th February 2009.

2. The Petitioner claims to be the owner, and in possession of land (ancestral land) bearing Khasra no. and area 0/138 (4-14-0), 0/137(0-14-0), 0/131/1 (3-

19-0), 0/130/1 (1-15-0), 0/128 (4-9-0), 0/127/1 (3-17-0), 0/124/1 (0-8-0), 0/103/1 (2-7-0) [hereafter 'subject land'] located in the revenue estate of village Masudabad, New Delhi.

3. Preceding the Award dated 11th February 2009 under which the subject land stood acquired, there was a declaration issued on 4th April 2007 under Section 6 of the LAA. According to the Petitioner, after passing of the Award, the Land Acquisition Collector ('LAC') neither took possession of the land nor paid the compensation amount or even deposited it with the Reference Court i.e. the Court of the learned Additional District Judge (ADJ). It is stated that in the 8 years since the notification of the land under Section 4 of the LAA, the Respondents have failed to utilise it for the public purpose for which it was notified for acquisition viz., construction of the 100 metres road. Accordingly, the Petitioner seeks the aforementioned relief of quashing of the land acquisition proceedings and a further direction to the Respondents to pay him interest at 22% along with the final compensation amount.

4. Pursuant to the notice issued in the petition, a reply has been filed on behalf of the LAC on 15th January 2016 in which *inter alia* it is pointed out that the public purpose of the aforementioned acquisition was the construction of the 100 metres road for the planned development of Delhi. It is stated that possession of land in Khasra No.0//124/1(0-8) was taken over and handed over to the beneficiary department on 19th April 2011. Compensation could not be disbursed as there was a dispute with regard to ownership. Therefore, the compensation amount was deposited by a cheque

dated 27th December 2013 to the Court of the learned ADJ, Dwarka.

5. The counter-affidavit of the LAC refers to the filing of WP (C) 6508 of 2012 by one Satyendra Singhal challenging these very land acquisition proceedings. It is pointed out that the land in respect of which relief was sought in the said writ petition included some of the Khasra numbers mentioned in the present writ petition. It may be noted that by order dated 6th August 2013, this Court dismissed W.P. (C) 6508 of 2012 as withdrawn thus ending the challenge to the land acquisition proceedings in question.

6. A separate counter-affidavit has been filed by the Delhi Development Authority ('DDA') in which it is pointed out that the present Petitioner has filed a separate petition for enhancement of compensation by filing a petition under Section 18 of the LAA in the Court of learned ADJ. It is also contended that the petition is barred by delay and laches since the Petitioner has approached the Court after more than 8 years of the notification under Section 4 of the LAA. It is also pointed out that no valid ownership document has been placed on record in support of the claim of the Petitioner that he is owner of the land in question. In the affidavit of the DDA, it is stated that the compensation amount was sent to the Land and Building (L&B) Department on 28th January 2010 itself.

7. Separate rejoinder affidavits have been filed by the Petitioner to the aforementioned counter-affidavits. In the said affidavits it is not denied that the Petitioner has filed an application under Section 18 of the LAA in the court of the ADJ. The point urged is that the compensation amount was

deposited by the DDA only on 28th January 2010, nearly a year after passing of the Award and, therefore, the requirement under Section 11 LAA was not satisfied. As far as deposit of the amount in the Court of learned ADJ is concerned, it is stated that it was done after a delay of 4 years of the Award. It is reiterated that possession of the land in question has not been taken till date.

8. It must be mentioned at this stage that this writ petition had earlier been dismissed by an order dated 9th May 2017 on the basis that the relief sought was under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act'), when in fact it was not. By a subsequent order dated 4th July 2019, Review Petition 482 of 2017 was allowed and the said order was recalled and the writ petition was restored to file.

9. It must also be noted that in the meanwhile the Petitioner filed CM No.30243 of 2019 stating that he came to understand that the very land which was a subject matter of the acquisition proceedings has been notified again under Section 3A(1) of the National Highways Act, 1956 ('NHA') for the public purpose of construction of the NH-344M Urban Extension Road ('UER') II. It is accordingly contended that there was a misuse of the powers under the LAA if indeed the land was not required for the construction of the 100 metres road.

10. It is further pointed out by Mr. Ritu Raj Biswas, learned counsel for the Petitioner, that the extent of land belonging to the Petitioner which has been

notified under Section 3A(1) of the NHA is to a lesser extent than the land notified under the LAA and, therefore, the entire land acquired under LAA is not needed for the NH-344M which happens to be a new project. On the above basis, the Petitioner additionally seeks an interim order restraining the Respondents from taking possession of the lands in question in the above Khasra numbers.

11. There are several difficulties in the way of the Petitioner being granted the reliefs sought in the present petition. In the first place, as already noticed hereinbefore, the Petitioner appears to have been aware of the passing of the Award on 11th February 2009. Not only did he not choose to challenge the land acquisition proceedings at that stage, but he did not do so even after knowing that a separate petition had been filed for that very relief by the aforementioned Satyendra Singhal in WP(C) 6508 of 2012.

12. On the contrary, the Petitioner admittedly filed a petition for enhancement of compensation under Section 18 of the LAA. Although it is sought to be contended that the Petitioner was not aware of till he learnt, through the orders passed in WP(C) 6508 of 2012, of the compensation amount not being deposited for nearly 1 year after the Award, the fact remains that the Petitioner did not come forward to challenge the acquisition till 23rd July 2014. It appears that the Petitioner accepted the fact of the Award and was content with seeking a higher amount of compensation. The Petitioner would, therefore, be precluded from contending now that there was no cause of action to challenge the land acquisition proceedings before the filing of the present petition on 23rd July 2014.

13. The Petitioner has no reasonable explanation to offer for the delay of over 5 years in approaching this Court for relief in respect of the land acquisition proceedings. Apart from the above ground being sufficient to dismiss the petition on laches, the second difficulty is that the properties in question form part of an unauthorized colony by the name of Amar Vihar which figures at Sl.No.1371 (registration No.1549) in the list of unauthorized colonies put up on the website of the Department of Urban Development, Govt. of NCT of Delhi. In fact, learned counsel for the Petitioner read out to this Court the certificate of provisional regularisation. He claimed that the Petitioner would be entitled to pursue the relief of regularization.

14. As far as present petition is concerned, the reliefs sought do not include one concerning regularization of the unauthorized colony in question i.e. Amar Vihar. This Court has consistently held that in respect of land which forms part of an unauthorized colony, the relief of quashing of land acquisition proceedings would not be available. In the context of a similar relief being sought under Section 24(2) of the 2013 Act, this Court has in ***Mool Chand v. Union of India 2019 (173) DRJ 595 DB*** 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.”

15. 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*). The above decisions in the context of Section 24 (2) of the 2013 Act would equally apply in the context

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of completed land acquisition proceedings under the LAA. Even where the land stands mutated in favour of the Petitioners and they have put up structures, the fact that they have joined the other residents in making a joint application for regularisation of the unauthorised colony in question, would mean that they cannot now seek a declaration that the land acquisition proceedings have lapsed. Having elected to seek regularisation, they cannot reprobate and seek invalidation of the land acquisition proceedings. They must follow the remedy they have opted for earlier to the logical end.

16. It was sought to be contended by learned counsel for the Petitioner that with the enactment of the 2013 Act with effect from 1st January 2014, for the first time a fresh cause of action arose in favour of the Petitioner and further that the earlier acquisition proceedings under the LAA stood 'repealed'. According to him with the Award under Section 11 A LAA not having been passed within two years of the notification under Section 4 LAA, it should be held to be illegal. He referred to Section 48 of the LAA and contended that the land ought to be considered as having been released from acquisition, particularly since it has been again notified for acquisition under Section 3A of the NHA.

17. The fact of the matter is that the land acquisition proceedings culminating in the Award dated 11th February 2009 was never challenged by the Petitioner at any point in time even while he was aware of Satyendra Singhal's petition. He chose only to seek higher compensation by invoking Section 18 LAA. As already noticed, the Petitioner has no satisfactory explanation for the laches in filing this petition. The plea in relation to the

time within which the Award had to be passed cannot therefore be entertained at this stage. With the dismissal of Singhal's petition the challenge to the acquisition proceedings failed and that attained finality. The 2013 Act cannot be construed to have, in the circumstances, given rise to a fresh cause of action to upset that finality.

18. The legal position in this regard has been made clear by the decision of the Supreme Court in ***Indore Development Authority v. Shailendra* (2018) 3 SCC 412** where it was observed as under:

“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.”

19. 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 not on the question of the petition seeking declaration under Section 24 (2) of the 2013 Act being barred by laches. This legal position was explained by this Court recently in its decision in *Mool Chand v. Union of India* (*supra*).

20. The further fact remains that there is no de-notification of the land from acquisition under Section 48 LAA. For reasons explained hereafter, the notification under Section 3A NHA as far as the lands forming the subject matter of the present petition is perhaps misconceived. It does not advance the case of the Petitioner one bit. Consequently, as far as the present petitioner is concerned, the relief of quashing of land acquisition proceedings cannot be granted to the Petitioner.

21. Now turning to CM No.28793 of 2019, it is sought to be explained by learned counsel appearing for the NHAI that the notification under Section 3A of the NHA was issued only to ensure that the lands needed for the construction of the NH-344M are clearly identified and made available to the NHAI. It has been clarified by Mr. Yeeshu Jain, learned Standing Counsel for the LAC/L&B that with the land in question already vesting in the Govt. of NCT of Delhi pursuant to the impugned Award dated 11th February 2009, there should be no legal impediment in the Govt. of NCT of Delhi handing over the said land to the NHAI thus rendering the notification under Section 3A of the NHA redundant to the extent of the said land. He further points out that although the steps under Section 3B and 3C of the NHA are under way, no declaration under Section 3D of the NHA has yet been issued.

22. It appears to the Court that the notification under Section 3A NHA as far it concerns the land that forms the subject matter of the present petition is perhaps misconceived and was not warranted in view of the fact that the said land already stood acquired and vested in the GNCTD. It is only a question of an internal arrangement by which the said land has now to be handed over by the GNCTD to the NHAI for the UER II project. In that view of the matter, the Court does not consider it necessary to stay any of the proceedings initiated under the NHA since the legal position as regards the land in question is clear.

23. For the aforementioned reasons, the writ petition and CM No.28793 of 2019 are hereby dismissed. Pending application also stands disposed of. As clarified in *Krishna Devi v. Union of India* (*supra*), the dismissal of the present petition will not come in the way of the Petitioners pursuing the claim for regularisation of the unauthorised colony in question.

24. Copy of the order be given *dasti* under the signatures of the Court Master. The interim order dated 29th September 2014 is hereby vacated.

CM APPL. 30244/2019 (exemption)

25. Allowed, subject to all just exceptions.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 08, 2019/tr