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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3373/2016**

MAHENDRA KUMAR & ORS Petitioners
Through Ms. Jyoti Kataria Bajaj, Advocate

Versus

UNION OF INDIA & ORS Respondents
Through Mr. Sanjay Kumar Pathak, Mr. Sunil
Kumar Jha & Mr. M.S.Akhtar,
Advocates for Respondent
LAC/GNCTD

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

% **ORDER**
19.07.2019

1. The corrected order will read as under:-

“W.P.(C) 3373/2016
MAHENDRA KUMAR & ORS. Petitioners
Through: Mr. NS Vasisht, Mr MP Bhargava
and Mr. Vishal Singh, Advocates
versus
UNION OF INDIA & ORS. Respondents
Through: Mr Roshan Lal Goel and Ms Anju
Gupta, Advocates for UOI.
Mr Dhanesh Relan, Standing counsel
for Respondent/DDA with Ms. Gauri
Chaturvedi, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA

ORDER
17.05.2019

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1. The prayers in the petition read as under:

(i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to the land to 2 Bigha 18 Biswas of land comprised in Khasra No.1467 (New No.908), situated in the revenue estate of village Mehrauli, NCT of Delhi having lapsed and further quashing the impugned notification No.F.15(iii)/59-LSG dated 13.11.1959 issued under Section 4, Notification No.F.4(98)/64-L&H dated 07.12.1966 issued under section 6 of the Old Land Acquisition Act and the Award No.83/82-83 dated 25.03.1983 with respect to 2 Bigha 18 Biswas of land comprised in Khasra No.1467 (New No.908), situated in the revenue estate of village Mehrauli, NCT of Delhi;

AND

(ii) issue a writ of mandamus and/or any other writ, order and direction of the similar nature issuing directions to the Respondents not to disturb or hinder the possession and enjoyment of the Petitioners over 2 Bigha 18 Biswas of land comprised in Khasra No.1467 (New No.908), situated in the revenue estate of village Mehrauli, NCT of Delhi.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 13th November 1959, followed by declaration under Section 6 of the LAA on 7th December 1966. The impugned Award No. 83/82-83 was passed on 25th March 1983.

3. It is stated that the six Petitioners are the owners of 2 Bighas 18 Biswas of the subject land and that the names of the predecessors of the Petitioners have been recorded in the revenue records for village Mehrauli. It is stated that the physical possession of the subject land has not been taken over by the Respondents, nor has any compensation been paid.

4. It is further stated that the Petitioners challenged the acquisition proceedings in this Court in W.P (C) 420 of 1983, wherein status quo was granted with respect to the subject land. W. P (C) 420 of 1983 was

dismissed by this Court by order dated 1st December 1995. SLP (C) No.5916 of 1996 filed in the Supreme Court against the said order was dismissed.

5. The Petitioners also refer to a representation dated 12th March 1997 made to the Secretary, L&B Department, GNCTD which was for de-notification of the subject land from the acquisition proceedings. There is no explanation in the petition for the inordinate delay in approaching the Court for relief. Thereafter the petition straightaway refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter the '2013 Act').

6. In the counter affidavit filed on behalf of the DDA, it is stated that pursuant to the impugned Award being passed, the physical possession of the subject land falling in Khasra No.1467 (New No.908) admeasuring (2-18) was handed over to the DDA by the LAC (South) through the L&B Department on 21st March 1997 at site. A copy of the possession proceedings has been annexed along with the affidavit. It is stated that the land in question vests with the Government and the DDA for all purposes and that the Petitioners have no right, title or interest in the land in question. As regards compensation, it is stated that an amount of Rs.11,63,865.03 was released to the L&B Department by cheque No.891467 dated 13th May 1983.

7. In the counter affidavit filed on behalf of the LAC (South), it is submitted that the land comprised in Khasra No.1467 (2-18) situated in the revenue estate of village Mehrauli was acquired for a public purpose and that possession of the subject land was taken on 21st March 1997 after the dismissal of WP(C) 421 of 1983 as well as the dismissal of the subsequent SLP (C) 5914 of 1996. It is stated that the Petitioners were sent notice under Section 12(2) of the LAA but they never approached the LAC for claiming compensation. The status of compensation amounts paid to recorded owners has been submitted in a tabular format in para 10 of the affidavit.

8. No rejoinder has been filed to either of the counter affidavits filed by the Respondents. In any event, the assertion by the Petitioners as

regards possession and the status of compensation paid for the land in question gives rise to disputed questions of fact which cannot be examined in the present writ petition. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

9. 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.”

10. The above decision has been re-affirmed 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/negatived, 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.”

11. Mr. Vasisht referred to the order dated 16th January 2018 passed by a Division Bench of this Court in W.P. (C) No. 3647 of 2016 (*Mahendra Kumar & Ors. v. Union of India & Ors.*) whereby in relation to Khasra No. 1418 in the same revenue estate of Village Mehrauli, this Court granted relief under Section 24 (2) of the 2013 Act. He submitted that by denying relief in this petition, this Court would be passing an inconsistent order in relation to lands in the same village.

12. The Court has perused the above order. It basically follows the judgment in *Pune Municipal Corporation v. Harakchand Misrimal Solanki (supra)* but makes no reference to the decision in *Mahavir v. Union of India (supra)* or the aspect of laches. Also, this Court when it passed the above order did not have the benefit of the judgment of the three Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra (supra)*, which on the aspect of laches, affirmed the decision in *Mahavir v. Union of India (supra)*. This Court is bound to follow the aforementioned decisions of the Supreme Court on the aspect of laches.

13. 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*

(2014) 3 SCC 183 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.***

14. 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 25th April 2016 which stood confirmed by order dated 14th November 2017 is hereby vacated.”

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 19, 2019

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