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

+ **W.P.(C) 3498/2016 & CM App. 14990/2016**

KARAN SINGH & ORS.

.... Petitioners

Through: Mr. B.S. Mathur & Mr. Raj Mathur,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Vijay Joshi, Sr. Panel Counsel for
R-1.
Mr. Yeeshu Jain, Advocate with Ms.
Jyoti Tyagi, Advocate for L&B/LAC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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19.02.2019

SANJEEV NARULA, J.:

1. The prayer in this writ petition reads as under:-

“a) Issue a Writ of Certiorari and/or any other Writ, Order or Direction of the similar nature declaring the entire acquisition alongwith Award No. 09/2005- 06/DC(N-W) announced on 12.07.2005 with respect to the land of the Petitioners bearing Khasra Nos. 43//4 min (4-07) total measuring 4 Bighas 07 Biswas situated in the revenue estate of Village Madan Pur Dabas, Delhi-110081; having been lapsed; and;

b) Pass any other order or writ or direction as this Hon’ble Court may deem fit and proper in the facts and circumstances of this case.”

2. In the present case, a Notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') in respect of land bearing Khasra No. 43/4 min (4-07) (hereinafter, the "subject land") was issued on 21st March, 2003 followed by declaration under Section 6 of the LAA on 18th March, 2004. Thereafter an Award bearing No. 09/05-06/DC(N-W) was rendered on 12th July, 2005.

3. The petitioner submitted that the ownership of the Petitioners was duly recorded in the revenue records and has a presumption of correctness. It was further submitted that the land in question is situated in an unauthorized provisionally regularized colony namely "Bhagya Vihar, Jain Colony, Rani Khara" since 1990 and despite this, the lands including the land in question, were notified for acquisition and the said Award was made despite protests. However, it was submitted that the petitioners have not allowed the Respondents to take actual physical possession of the subject land nor any compensation has been paid or tendered by the Respondents to the Petitioners. The residents of the aforesaid colony, got registered a residents welfare association in the name of "Bhagya Vihar, Jain Colony, Rani Khara, Delhi-81" under Societies Registration Act, (XXI) of 1860 and applied for regularization of the colony under a policy of the Government of India and National Capital Territory of Delhi and a Provisional Certificate for Regularization was issued on 17th September, 2008.

4. Thus, the Petitioner claims that neither possession of the subject land has been taken nor compensation has been paid to the recorded

owners/Petitioners. Hence, he would be entitled to a declaration under section 24(2) of the 2013 Act.

5. On the contrary, the learned Counsel for the Land Acquisition Collector (LAC) in its counter affidavit has submitted that the actual vacant physical possession of the subject land falling in Khasra No. 43/4 min (4-07) was taken by the LAC and handed over to the beneficiary department on 21st November, 2012 which were never challenged by the petitioners. The petitioners however, never turned up to receive compensation.

6. The stand of LAC is fortified by the Counter affidavit filed by the DDA. DDA in its counter affidavit has disputed the ownership claim of Petitioners over the subject land. It was further submitted that the physical possession of the subject land was handed over to DDA by LAC on 21st November, 2012 and the said land was transferred to engineering department for its development and presently, the land is under the control and possession of DDA and required for construction of UER-II (100 Mtr. Wide Road). With respect to compensation, it was submitted that the DDA has already released a sum of Rs. 5,58,06,994/- vide Cheque dated 9th August, 2005 to Land & Building Department on account of compensation against Award no. 9/2005-06. Further the learned counsel for the DDA submits that the petition is barred by delay and laches for failure of the Petitioners to challenge the acquisition proceedings for several years.

7. Petitioners in their rejoinder to the counter affidavit of LAC and DDA have submitted that possession of the subject land has never been taken over

by the Respondents at any point of time as the same forms part of fully built up unauthorized colony which is under consideration of its regularization and that the possession proceedings, if any, conducted by the Respondents are merely paper proceedings and they have no value in law.

8. Since Respondents have denied Petitioners' claim of having possession over the subject land, it becomes a disputed question of fact. This petition has been filed invoking the extraordinary power of the Court under Article 226 of the Constitution of India. It is a settled position of law that this Court, in the exercise of Writ Jurisdiction, does not delve into disputed question of rights and title of the parties. Thus matters in which disputed questions of fact are involved, cannot be decided in a summary proceeding based solely on the pleadings of the parties. Such disputed matters must be decided by the Civil Courts after recording of due evidence in the matter.

9. Further, there is no explanation whatsoever offered in the petition for the inordinate delay in coming forward to file the present petition. The acquisition proceedings in respect of the subject land were conducted in the year 2005, whereas the present petition has been filed after more than a decade and no other steps have been taken by the Petitioners. The petition is obviously barred by laches.

10. In ***Mahavir v. Union of India (2018) 3 SCC 588***, the Supreme Court held 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.”

11. The aforesaid Judgment has been considered by the Supreme Court in the decision of ***Indore Development Authority v. Shailendra*** reported at ***(2018) 3 SCC 412***, relevant portion of which is reproduced hereunder:-

“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 W.P.(C) Nos. 946/2017 & 948/2017 Page 5 of 7 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 W.P.(C) Nos. 946/2017 & 948/2017 Page 6 of 7 would be received or entertained by the courts.”

12. Yet another hurdle comes in the way of the Petitioner, since the admitted position is that the land in question is part of an unauthorised colony. This Court has consistently been refusing the relief of declaration of deemed lapsing of land acquisition proceedings when the property in question is part of an unauthorised colony. In its order dated 10th January, 2019 in WP (C) No. 3630/2018 (**Akhil Sibal s. GNCTD**) it was observed in this context by this Court 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 W.P. (C) Nos. 946/2017 & 948/2017 Page 7 of 7 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 in an unauthorized colony i.e. Guru Ram Das Nagar. The Court there has pointed out that the Petitioners 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 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 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.”

13. This court has on the basis of its decision dated 17th January 2019 in W.P (C) 4528 of 2015 (***Mool Chand v. Union of India***) and 25th January 2019 in WP (C) 3438 of 2015 (***Krishna Devi v Union of India***), dismissed similar petitions seeking a declaration under Section 24(2) of the 2013 Act, on the ground of delay and laches.

14. Following the aforementioned decisions and in the light of the facts and circumstances listed out hereinbefore, the Court dismisses the present petition both on the ground of laches as well as merits. In light of the abovementioned order, the application stands disposed of and the interim order passed on 29th April 2016 stands vacated.

SANJEEV NARULA, J.

S. MURALIDHAR, J.

FEBRUARY 19, 2019/Bisht