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

+ **W.P.(C) 3657/2016**

M/S DHOOP CHAWN CONSTRUCTION & FINANCE (P) LTD.

..... Petitioners

Through: Mr. NS Vasisht and Mr MP Bhargava,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Meera Bhatia, Advocate for
Respondent/UOI.
Mr. Kunal Sharma, Advocate for DDA
Mr. Yeeshu Jain, Standing Counsel and
Ms. Jyoti Tyagi for L&B/LAC

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

ORDER
20.05.2019

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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 4 Bighas of land comprised in Khasra No.1442/2 (2-0) & 1443 (2-0), situated in the revenue Estate of Village Chattarpur, Tehsil Hauz Khas, New Delhi having lapsed and further quashing the impugned notification No.F.9(16)/80-L&B dated 25.11.1980 issued under Section 4, Notification No.F.9(26)/85-L&B dated 07.06.1985 issued under Section 6 of the Land Acquisition Act, 1894 and the Award no.15/87-88 dated 05.06.1987 with respect to 4 Bighas of land comprised in Khasra No.1442/2 (2-0) and 1443 (2-0), situated in revenue Estate of Village Chattarpur, Tehsil Hauz Khas, New 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 Petitioner over 4 Bighas of land comprised in Khasra No.1442/2 (2-0) and 1443 (2-0), situated in revenue Estate of Village Chattarpur, Tehsil Hauz Khas, New Delhi.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 25th November 1980, followed by declaration under Section 6 of the LAA on 7th June 1985. The impugned Award No. 15/87-88 was passed on 5th June 1987.

3. It is further stated that the Petitioner purchased the land comprised in Khasra No.1442/2 (2-0) from one Smt. Walayti Devi by a registered sale deed dated 28th August 1991 whereas the land comprised in Khasra No.1443 (2-0) was purchased from one Shri Satish Chander Gandhi by registered sale deed dated 3rd September 1991. The two sale deeds have been annexed along with the petition. It is stated that after the said purchase, the name of the Petitioner was duly mutated in the revenue records.

4. It is further stated that the subject land has been in the continuous, actual physical possession of the Petitioner and lies within the boundary walls built by the Petitioner and also that no compensation has been tendered to the Petitioner or its predecessors. 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’). There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

5. In the counter affidavit filed on behalf of the DDA, it is stated that the land acquisition proceedings in respect of Award No.15/87-88 have already attained finality and the petition ought to be dismissed being barred by delay. It is submitted that the possession of the land in question was taken on 14th July 1987 and handed over to the DDA by the concerned LAC and that the land vests with the Government free from all encumbrances, which includes any right of the recorded owners of the land. A copy of the possession proceedings has been enclosed along with the affidavit.

6. In the counter affidavit filed by the LAC (South), it is stated that the petition is liable to be dismissed as the Petitioner is not the recorded owner of the subject land but is a subsequent purchaser having claimed ownership on the basis of unregistered sale deeds. It is submitted that these unregistered sale deeds cannot confer the title of the land on the Petitioner as the name of the Petitioner was never mutated in the revenue records as claimed. As regards possession, it is stated that subsequent to the Award No.15/87-88 being passed, the possession of land falling in Khasra No.1442/2 (2-0) has not been taken whereas possession of land falling in Khasra no.1443 (3-15) also could not be taken due to stay granted in WP(C) 3149/1985. As regards compensation, it is submitted that compensation amount of Rs.215114.41/- was sent to the RD in the name of one Beleyato D/o Duli Chand and part compensation amount of Rs.197123.28/- in the name of one Sobha narain W/o Pratap Singh. It is further submitted that “some of the amount was withdrawn from RD vide RV No.1372 dated 7.5.93 for Rs.194793740.80 for award no. 1/93-94, village Kakrola.”

7. No rejoinder has been filed to either of the counter affidavits filed by the

Respondents. Furthermore, as noted above, in para 8.2 of the petition, the Petitioners have claimed ownership of the subject land on the basis of two sale deeds. A close scrutiny of these documents reveal that they are unregistered sale deeds which have been executed subsequent to the passing of the impugned Award dated 5th June 1987 and these have no legal sanctity whatsoever. They are also in the teeth of the Delhi Lands (Restrictions on Transfer) Act, 1972 and, therefore, confer no valid legal title or interest for the lands in question upon the Petitioner.

8. 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 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 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 11th September 2017 passed by a Division Bench of this Court in W.P. (C) No. 3659 of 2016 (*M/s Tarouni Construction & Finance (P) Ltd. v. Union of India & Ors.*) whereby in relation to Khasra No. 1442/2 (1-10) in the same revenue estate of Village Chattarpur, Tehsil Hauz Khas, 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 (2014) 3 SCC 183* 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* (*supra*) 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 2nd May 2016 which stood confirmed by order dated 29th January 2018 is hereby vacated.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 20, 2019
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