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

+ **W.P.(C) 5072/2018 & CM Nos. 1900 & 27771/2019**

DEEPAK ARORA & ORS.

..... Petitioners

Through: Ms. Prema Priyadarshini,
Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Shobhna Takiar with Ms.
Shweta Anand, Advocates for
DDA.

Mr. Yeeshu Jain, Standing
Counsel for L&B/LAC with Ms.
Jyoti Tyagi.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

07.08.2019

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1. The prayers in the petition read as under:

“a) issue appropriate writ, order, direction declaring the land acquisition proceedings in respect of the following land of the Petitioners comprised in Khasra No.34 and 45 min situated in Revenue Estate of Village Nangli Jalib, Tehsil and District Delhi initiated vide Notification bearing No.F.15(24E)/60- LSG/L&D dated 04.10.1961 issued under Section 4 of the Land Acquisition Act, 1894 and all subsequent proceedings including the Award No. 20/1973-74 dated 10.07.1973 have lapsed in view of Section 24 (2) of The Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013:

i. Petitioner No.1 - Mr. Deepak Arora's property bearing No. K-133/1 & K-134 (Back Portion) situated at Krishna Park Extension, Outer Ring Road, Vikaspuri, New Delhi- 110018 admeasuring 28.5 sq.yds. in K-133/1 and 42 sq.yds. in K-

134, falling in Khasra No.34 situated in Revenue Estate of Village Nangli Jalib, Tehsil and District Delhi.

ii. Petitioner No.2 - Ms. Sharda Arora's property bearing No. K-134 (Front Portion) situated at Krishna Park Extension, Outer Ring Road, Vikaspuri, New Delhi- 110018 admeasuring 21.5'X12.5' (i.e. 29.86 sq. yds.) falling in Khasra No.34 situated in Revenue Estate of Village Nangli Jalib, Tehsil and District Delhi.

iii. Petitioner No.3 - Mr. Pritam Singh's property bearing No. K-131, Krishna Park Extension, Outer Ring Road, Vikaspuri, New Delhi-110018 admeasuring 38sq.yds. falling in Khasra No.34 situated in Revenue Estate of Village Nangli Jalib, Tehsil and District Delhi.

iv. Petitioner No.4 - Ms. Sonika Kohli's property bearing No. K-143, Krishna Park Extension, Outer Ring Road, Tilak Nagar, New Delhi-110018 admeasuring 80 sq. yds. falling in Khasra No. 34 situated in Revenue Estate of Village Nangli Jalib, Tehsil and District Delhi.

v. Petitioner No.5 - Smt. Sudesh Kohli's property bearing No. K-144, Krishna Park Extension, Outer Ring Road, Vikaspuri, New Delhi-110018 admeasuring 11'X40'(i.e. 48.89 sq. yds.) falling in Khasra No.34 situated in Revenue Estate of Village Nangli Jalib, Tehsil and District Delhi.

vi. Petitioner No.6 - Mr. Harjeet Singh's property bearing No. 0-1/61, New Mahavir Nagar, Outer Ring Road, New Delhi-110018 admeasuring 20 sq. yds. falling in KhasraNo.45 situated in Revenue Estate of Village Nangli Jalib, Tehsil and District Delhi. pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 24th October 1961, followed by declaration under Section 6 of the LAA on 10th

September 1964. The impugned Award No. 20/1973-74 was passed on 10th July 1973.

3. It is stated in the petition that the Petitioners “are the owners of the land in question”. It is stated that physical possession of the subject lands was not taken nor was the compensation ever paid to the Petitioners. It is stated that on 21st July 1973 the LAC took paper possession of land admeasuring 145 Bhigha 17 Biswa including Khasra Nos. 34 (4-17) and 45 min (9-12). On 2nd July 1975, the DDA was handed over land admeasuring 63 Bighas 7 Biswas and this did not include the land of the Petitioners. It is stated that the land of the Petitioners “does not fall in the alignment of the Outer Ring Road”. It is stated that on 22nd April 1983, since there was built-up construction on the lands, the acquisition proceedings were abandoned.

4. It is further stated that on 29th April 1997, the PWD had issued demolition notices to the predecessor-in-interest of the Petitioners. The Petitioners filed CWP No. 2006/1997 for quashing of the above mentioned notice. On 11th December 2003, this court dismissed the petition with a direction to PWD to carry out a survey of the area and thereafter, to construct a road by removing all structures falling within the road widening project. On 8th March 2016 Respondent No.4 PWD issued demolition notice for the properties of the Petitioners on the changed alignment for the widening of the Outer Ring Road.

5. The Petitioners filed a suit CS (OS) 174/2016 along with I.A. No. 4548/2016 for mandatory and permanent injunction. On 8th May 2017, the Ld. Single Judge disposed of the I.A. and issued a direction for demolition of the properties on the subject land. The Petitioner filed

FAO (OS) 161/2017 which was dismissed on 31st May 2017. The Petitioners filed a review petition No. 217/2017 which was dismissed on 23rd April 2018 with liberty to the Petitioner to approach the learned Single Judge again to be decide on merits and whether the subject land acquisition stands lapsed in view of the 2013 Act.

6. In the counter affidavit of the PWD it is stated that the present Writ Petition is barred by the principle of *Res Judicata* as the Petitioners have previously filed CS (OS) No. 174/2016 on the same cause of action which was dismissed vide order dated 8th May 2017 directing the PWD to remove all encroachments from the subject land. The Petitioners then filed FAO (OS) No. 161/2017 which was dismissed vide judgment dated 31st May 2017. It is stated that in the Review petition filed by the Petitioners, an order was passed dismissing the review on 23rd April 2018 granting them liberty to raise the plea of lapsing of acquisition before the Ld. Single Judge, whereas, the Petitioners have filed the present petition.

7. In the counter-affidavit filed on behalf of the LAC, it is submitted that the petition is liable to be dismissed as in the sale deed annexed by the Petitioner No. 1 as Annexure P-1, the Khasra number reflects as 31, whereas the Petitioners in the present petition are seeking relief with respect to Khasra No. 34, for which they have not annexed any document showing ownership or title. It is further stated that the Petitioner has suppressed material facts by stating in Para 8(v) of the petition that the possession of only 145 Bighas and 17 Biswas including Khasra Nos. 34 (4-17) and 45 min.(9-12) was taken on 21st July 1973. It is stated by the LAC that the entire possession of Khasra No. 34 was

taken on 21st July 1973 whereas Khasra No. 45 consists of 58 Bighas 3 Biswas out of which possession of 9 Bighas 12 Biswas was taken on 21st July 1973 itself, and further possession of 41 Bighas 12 Biswas was taken on 3rd August 1984. It is submitted that possession of only 6 Bighas 12 Biswas could not be taken in Khasra No. 45. On the aspect of compensation it is stated that compensation was paid to the recorded owners, who at that time were Mr. Rabhir Singh, Mr. Mahender Singh, Mr. Tarif Singh, Mr. Mahabir Singh, Mr. Niranjana Singh who were paid Rs.53,977.87 each as 1/5th share on 8th November 1973. It is further stated that the disputed amount of Rs.1,52,395.31 was sent to reference court under Section 30-31 of the LAA. It is also stated that compensation of Rs.2,05,813.07 was sent to the Reference Court for persons figuring in Item No. 30-33 who did not claim compensation on 2nd November 1973.

8. In the counter-affidavit filed by the DDA, it is submitted that the petition is barred by delay and laches. It is further submitted that as per the land records, the physical possession of Khasra Nos. 34 (4-17) and 45 (58-03) was handed over by the LAC to the DDA on 21st July 1973 and 3rd August 1974 respectively. It is further stated that land measuring 22 Bighas in Khasra No. 45 and 3 Bighas 5 Biswas in Khasra No. 34/2 was transferred to PWD and remaining land admeasuring 4 Bighas 2 Biswas was transferred to Urban Village Development (UVD) on 7th August 1982.

9. In the rejoinder filed by the Petitioners to the counter affidavit of the LAC, it is stated that except land admeasuring 63 Bighas 7 Biswas which was taken over by the LAC, the other land admeasuring 255

Bighas 15 Biswas was abandoned by the DDA and the acquisition proceedings did not attain finality. It is stated that the land of the Petitioners forms part of land admeasuring 1 Bighas 12 Biswas in Khasra No. 34 which was not handed over to the PWD. It is stated that the Petitioners and their predecessor-in-interest have been in possession of the land since 1950 and no compensation has been paid. The rejoinder filed to the counter affidavit of the DDA is identical to the rejoinder filed to the counter affidavit of the LAC.

10. It must be noted at this stage that the petition was first listed before this Court on 17th May 2018 when the following order was passed:

“The petitioners seek a declaration that the acquisition proceedings pertaining to the land of the petitioners comprised in Khasra Nos. 34 and 45 Min situated in the revenue estate of Village Nangli Jalib, Tehsil and District Delhi are deemed to have lapsed as neither physical possession has been taken nor compensation has been tendered.

Notice to show cause as to why the petition be not admitted.

Counsels appearing on behalf of the respondents accept notice.

Counsels for the respondents submit that the physical possession of the land has been taken and compensation has also been tendered. Further, counsel for the PWD submits that the area in question is required for construction of the outer ring road project. Ms. Marwaha, counsel for the petitioner, submits that the project stands completed and thus, the land is not required at all. It is also contended that the PWD is not in possession of the land in question.

It is agreed that the stay application be considered after the response is filed by the respondents. Let replies to the stay application be filed by 28.05.2018. Rejoinder, if any, may

be brought to the Court.

List on 30.05.2018.”

11. On the next date i.e. 30th May 2018, this Court after hearing the parties and perusing the affidavits of the PWD and the LAC declined to grant stay and dismissed the application CM No. 19586 of 2018 by an order, the relevant portion of which reads thus:

“5...Counsel for the respondent submits that the notice was issued on 08.03.2016 to the occupants to vacate the premises within one month. However, demolition action could not be taken as there was change in the jurisdiction of the Sub-Divisional Magistrate. She further submits that the petitioners have also filed writ petitions being W.P. (C) 313-19/2005, 3818/2014, 3846/2014, 7372/2014, which were dismissed by an order dated 07.10.2015. She contends that due to the petitions being filed, the public project could not be completed. We may note that on the last date of hearing, we had issued notice and adjourned the matter for today. While issuing notice, no stay was granted. The submissions made by Ms. Marwaha, counsel for the petitioners, can only be tested when the petition is set down for final hearing and disposal and having regard to the orders passed from time to time as also the stand taken by the PWD in the counter affidavit, which we have also extracted in the afore-going paras and also having regard to the importance of public project where the over-bridge has been constructed but the cycle track, service lane track and footpath are lying incomplete, we decline to grant any stay in the matter.

6. Stay application being CM APPL 19586/2018 is accordingly dismissed.”

12. The Petitioners subsequently filed CM No. 1900/2019 with a prayer for being paid compensation under the 2013 Act, stating that they should be entitled to receive fair compensation if the possession of the subject lands is forcefully taken from them. It was stated that the Petitioners had

received a Final notice No. 10(DB)/4115 dated 14/12/18 seeking possession of the subject land.

13. The Petitioners also filed CM No. 27771/2019 for modification of the order dated 30th May 2018 and to restrain the Respondents from dispossessing the Petitioners from the subject land and for status quo to be maintained.

14. However, when the above application CM 27771 of 2019 was listed for hearing, this Court did not grant any interim stay of dispossession. The order dated 31st May 2019 passed by this Court reads as under:

“1. List along with main petition on August, 2019, the date already fixed.

2. It is made clear that on the next date of hearing, the writ petition itself will be heard finally.

3. Copies of the application be served on the counsel for the non-applicants in the meanwhile.”

15. The Petitioners filed an SLP (C) No. 17019-20/2019 in the Supreme Court to challenge both the earlier order dated 30th May 2018 dismissing CM 19586/2018 and the order dated 31st May 2019 in CM 27771 of 2019. The Supreme Court dismissed both SLPs by the following order on 19th July 2019:

“Diary No.24504/2019

Delay condoned.

We are not inclined to interfere with the impugned order it being an interim in nature except to make a request to the High Court to dispose of the Writ Petition out of which the

special leave petition arises expeditiously.

It is with this direction, the special leave petition(s) is/are dismissed.

Pending application shall also stand disposed of.

Diary No(s). 24472/2019

Learned counsel for the petitioners is permitted to withdraw this petition with a liberty to approach the High Court in appropriate proceedings.

The special leave petition(s) is/are, accordingly, dismissed as withdrawn.

Diary No(s). 24473/2019

There is a delay of 682 and 355 days in filing the special leave petition. We are not inclined to condone the same.

Even on merits also, we are not inclined to interfere with the impugned orders. The special leave petition(s) is/are accordingly dismissed on the ground of delay as well as on merits.

Pending applications shall also stand disposed of.”

16. Ms. Prema Priyadarshini, learned counsel for the Petitioners did not dispute that the sale deed produced with the petition indicated the Khasra number as 31 whereas the prayer was in respect of land in Khasra No. 34. She sought to explain that there was a typographical error in the original sale deed. This explanation appears incredible for the simple reason that the sale deed is dated 6th September 2002 and if such a typographical error existed since then it ought to have been corrected even before filing the present petition in 2018 or at least soon after the petition was filed. Consequently, the Court is not prepared to recognise the Petitioners’ right or interest in the subject land which is

described in the petition as being located in Khasra No. 34.

17. Interestingly the petition filed in 1997 i.e. CWP No. 2006/1997 was by Petitioner No.1 as a GPA holder and it is only in 2002 the above sale deeds, although pertaining to a land in a different Khasra number, were registered. Considering that the Award was of 1973, the above sale deeds of 2002 were clearly in the teeth of the Delhi Lands (Restriction on Transfers) Act 1972. This further makes the claim of the Petitioners to compensation for the acquisition of the subject land legally untenable. The fact remains that compensation in terms of the Award of 1973 has been paid to the recorded owners and this fact has not been disputed by the Petitioners.

18. There is a further issue raised by the Petitioners on the regularization of colony where the subject land is located being regularized. The contention is:

“The land admeasuring 63 Bighas 7 Biswas falling in the alignment of the widening of outer ring road was part of regularization plan of the colony, which has been regularized by the Respondent No. 2 i.e. DDA vide Resolution No. 78 dated 22.4.1983. The land of the Petitioners did not fall into the alignment of the outer ring road and therefore neither possession nor the compensation for the land was paid to the predecessor-in interest of the Petitioners or the Petitioners.”

19. However this has been disputed by Respondent No.1 in its counter affidavit in para 11 as under:

“11. The unauthorised colony of Mahavir Nagar Extension and Krishna Park were regularised on 22.04.1983 by the Technical Committee of DDA, however duly noting and stating thereby that no structures be affected within 64m of Right of Way of the Outer Ring Road. A copy of Minutes

of Meeting of DDA's Technical Committee dated 22.04.1983 indicating the regularization of the unauthorized colony of Mahavir Nagar Extension and Krishna Park Extension are annexed hereto and marked as Annexure A-9. The contention of the Petitioners that their properties formed a part of the Regularization plan of the DDA issued vide its resolution No. 78 dated 22.04.1983 is absolutely false, misconceived and mala fide."

20. The assertion by the Petitioners that they continue to remain in possession of the land in question gives rise to a disputed question of facts. Both the LAC and the DDA have disputed this in their respective counter affidavits. This disputed question of fact cannot possibly be examined in the present petition.

21. The fact further remains that the Petitioners have exhausted several rounds of litigation earlier and the remedy under Section 24 (2) of the 2013 Act would not in such circumstances be available to them. The following observations in the judgment of the three Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra (2018)* 3 SCC 412 are relevant in this context:

"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.”

22. 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 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.

23. For the aforementioned reasons, the writ petition is dismissed but in the circumstances, with no orders as to costs. The pending applications are disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 7, 2019

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