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

+ **W.P.(C) 3830/2017**

HIRENDRA GUPTA

..... Petitioner

Through: Mr.Gaurav Puri with Mr.Aditeya Bali
with Mr.Sarthak Gupta, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ORS

..... Respondents

Through: Mr.Arjun Pant, Advocate for DDA.
Mr.Yeeshu Jain, Standing Counsel for
LAC/L&B.

+ **W.P.(C) 5048/2017**

HIRENDRA GUPTA

..... Petitioner

Through: Mr.Gaurav Puri with Mr.Aditeya Bali
with Mr.Sarthak Gupta, Advocates.

versus

LAND ACQUISITION COLLECTOR & ORS

..... Respondents

Through: Mr. Rajneesh Sharma, Advocate for
LAC/L&B.
Mr.Arun Birbal with Mr.Sanjay
Singh, Advocates for DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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19.03.2019

1. The Petitioner states that his father late Shri Balkrishna Prasad Gupta (B.K. Prasad Gupta) died on 11th August 2012 leaving behind his last Will

and testament dated 10th July 2012 which was duly registered. Under the said Will he gave all his rights qua ancestral properties and compensation to be received under various land acquisition awards in respect of lands in village Chowkri Mubarakabad, Tehsil and District Delhi.

2. It is claimed by the Petitioner that 1/3rd of the ownership of 968 bighas and 15 biswas of the land in Khasra Nos.1 to 109 was with M/s.Mamleshwar Pershad & Kamta Pershad. Of the balance 2/3rd, 64% was to be owned by Delhi Cattle Breeding Farm Pvt. Ltd. and the balance 36% in equal shares by all the sons of late Shri Parmeshwari Prasad Gupta which included the testator, H.K.Prasad Gupta, G.K.Prasad Gupta and V.K.Prasad Gupta. This understanding was arrived at by way of a compromise before the Supreme Court in Civil Appeal 1643 (N) of 1971 on 9th October 1972. According to the Petitioner in terms of the above compromise the father of the Petitioner came to own 1/4th out of 36% of the 2/3rd area of the total land comprising 968 bighas and 15 biswas in above Khasra Nos.1 to 109 at village Chowkri Mubarakabad.

3. Acting on the above compromise the land owners preferred a petition under Section 18 of the Land Acquisition Act, 1894 ('LAA') for enhancement of compensation as determined in three awards viz., Award No.1453 dated 19th December 1962, Award No.1547 dated 21st March 1963 and Award No.1686 dated 20th February 1964 under the LAA. Three petitions under Section 18 LAA were numbered as LAC Nos.159, 160 and 161 of 1980.

4. By a decision dated 31st January 1981 the reference Court granted 9% of the 2/3rd share of the total compensation to the Petitioner's father late Shri B.K.Prasad Gupta. By its decision dated 27th August 1984 in RFA Nos.166, 167 and 168 of 1981 this Court also gave 9% of the 2/3rd further enhanced compensation to the father of the Petitioner.

5. According to the Petitioner of the 968 bighas and 15 biswas in Khasra Nos.1 to 109 the Respondents i.e. the Land and Building Department (L&B) (Respondent No.2) acquired 901 bighas and 18 biswas leaving a balance of 66 bighas and 17 biswas. It is, however, claimed that the Respondents took possession of the entire 968 bighas and 15 biswas. The Petitioner claims that he owns approximately 4 bighas and 1 biswa out of the 66 bighas and 17 biswas that were left out of the three awards. No compensation was paid for that left over land either to the father of the Petitioner nor any notice received from the Respondents in that regard. The Petitioner claims ownership of 4 bighas and 1 biswa of land by way of the registered Will annexed with the present petition. Further he refers to the *jama bandi* for 1944-45 showing the ownership of the land in question.

6. As far as the companion WP(C) 5048 of 2017 is concerned the subject matter is 263 bighas and 5 biswas of land which according to Petitioner was left out of Award No.1686 of 1964 but wrongly taken possession of by the Respondents. According to the Petitioner from the information available on the website of the Delhi Government it was seen that as far as Award No.1453 was concerned in terms of which 99 bighas and 16 biswas land was acquired the website shows only 98 bighas and 7 biswas having been

acquired. Of the difference of 1 bigha and 9 biswas the Petitioner's share is claimed to be 9% of the 2/3rd area of group share in 1 bigha and 9 biswas. Likewise in Award No.1686 although the land acquired was to the extent of 1528 bighas and 8 biswas in terms of the award, the actual possession of land acquired was 359 bighas and 5 biswas thus leaving out 169 bighas and 3 biswas. Here again the Petitioner claims his share to be 9% of the 2/3rd of the group share. The third award i.e. 1686 the extent of land not acquired was 263 bighas and 5 biswas in which again the Petitioner claims 9% of the 2/3rd area of the group share.

7. In both writ petitions the prayers are for handing over the ownership documents in relation to the left out portions of the land to hand over to the Petitioner both possession and ownership documents or compensation and alternative land under 2013 Act.

8. In the WP(C) 3830 of 2017 while directing notice to issue to Respondents by order dated 4th May 2007, this Court directed parties to maintain status quo with regard to the nature, title and possession of the subject land i.e. 4 bigha and 1 biswa of lands situated at Village Chowkri Mubarakabad out of 66 bighas and 17 biswas of the remaining land in Khasra Numbers 1 to 109 which lands were not acquired and left out of the three awards No. 1453, 1547 & 1686 acquiring 901 bighas and as 18 biswas during the pendency of these proceedings.

9. Subsequently on 14th May 2018 the following order was passed:

“The present petitioner claims that between the years 1962 to 1964 three awards were rendered for 901 bighas and 18 biswas of land but possession was taken of 968 bighas and 16 biswas. The petitioner claims his share out of the balance land of which possession was taken in excess i.e., 66 bighas and 17 biswas out of which he claims 4 bighas and 1 biswa. Mr Jain, learned counsel appearing for LAC, has opposed this petition on the ground of delay and laches and also submits that disputed questions of fact cannot be decided in a writ petition. Mr Puri, learned counsel for the petitioner, wishes to look into the matter.

List on 22.05.2018.”

10. As far as the WP(C) 5048 of 2017 is concerned, notice was issued on 31st May 2017. The petition was heard with WP(C) 3830 of 2017 and common orders were passed in both writ petitions from 14th May 2018 onwards. On 22nd May 2018 in WP(C) 3830 of 2017 the Court noted that the decision in *Indore Development Authority vs. Shailendra (2018) 3 SCC 412* and that it had been referred to a Constitution Bench.

11. In the counter-affidavit filed by the LAC in WP(C) 3830 of 2017 it is pointed out that no khasra number is mentioned for which the Petitioner is seeking relief and that description of land is vague. It is also submitted that the petition is time barred. It is further pointed out as under:

“It is highly improbable at this stage to submit any response with accurate authenticity as the Awards itself noted that some lands was under Bhoomidari rights of different people, some lands were under the cultivation of Harijans who constructed houses, some vest with Gaon Sabha and some lands belongs to Custodian.”

12. It is further averred in paras 6 and 7 of the counter affidavit of the LAC as under:

“6. That the present writ petition is liable to be dismissed as the compensation for the lands falling in Award No. 1453 dated 19.12.1962, Award No. 1547 dated 21.3.1963 and Award No. 1686 dated 20.2.1964 was duly sent before Reference Court and if the petitioner and/or his father was really aggrieved of any measurement of land as alleged herein, appropriate steps would have been taken at appropriate stage. It is submitted that having taken no grievance at the appropriate stage, if any, would turn the claim as stale and which cannot be allowed under the writ jurisdiction.

7. That it is submitted that the lands of village Chowkri Mubarakbad were notified vide Notification under section 4 of the Land Acquisition Act, 1894 and the Awards No. 1453 dt. 19.12.62, Award No. 1547 dt. 21.3.63 and Award No. 1686 dated 20.2.1964 came to be passed. It is submitted that in pursuance of the Awards, stated supra, the answering respondent has duly taken the actual vacant physical possession of the notified lands falling in different khasra numbers and handed over to the requisition agency. It is further submitted that the compensation was deposited with the Reference Court vide cheque number 153493 dated 20.2.1963 amounting to Rs.1,86,440/-, cheque number 460880 dated 17.1.1964 amounting to Rs. 20,225/- and cheque number 461208 dated 28.3.1964 amounting to Rs. 14,52,360/- respectively.”

13. As far as the DDA is concerned, it is again stated that Petitioner did not disclose specific khasra number in respect of which he is seeking relief. It is pointed out he has not placed any documents to prove how he is claiming ownership of the lands in question. In a tabular form in para 6 the DDA given the details of the extent of land possession of which has been handed over to it.

14. As far as WP(C) 5048 of 2017 is concerned, the LAC (NW) filed a counter-affidavit on 1st June 2018 where in para 6 it is stated as under:

“6. That the land admeasuring 51 bigha 01 Biswas and 19 niglia 07 biswas at item no 01 & 2 in award no. 1453 dated 19.12.1962 were in the ownership of Cattle Breeding Farm Pvt. Ltd. Delhi and the awarded compensation was sent to the court of Ld. ADJ vide cheque no. 153493 dated 20.02.1963 amounting to Rs. 186440/-. It is further submitted that none of the land was in the ownership of Sh. B.K,Prasad Gupta, Sh. H.K. Prasad Gupta, Sh. G. K. Prasad Gupta and Sh. V. K. Prasad Gupta. That the land admeasuring 10 bigha 01 Biswas out of Khasra No. 1/1 at item no. 1 in award no. 1547 dated 21.03.1963 were in the ownership of Cattle Breeding Farm Pvt. Ltd. Delhi and the awarded compensation was sent to the court of Ld. ADJ vide ,cheque no. 460880 dated 17.01.1964 amounting to Rs. 20225/-. It is further submitted that none of the land was in the ownership of Sh. B.K.Prasad Gupta, Sh. H. K. Prasad Gupta, Sh. G. K. Prasad Gupta and Sh. V. K. Prasad Gupta. That the land admeasuring 821 bigha 09 Biswas at item no. 26 in award no. 1686 dated 20.02.1964 were in the ownership of Cattle Breeding Farm Pvt. Ltd. Delhi and the awarded compensation was sent to the court of Ld. ADJ vide cheque no. 461208 dated.28.03.1964 amounting to Rs.1452360/-. It is further submitted that none of the land was in the ownership of Sh. B.K.Prasad Gupta, Sh. H. K. Prasad Gupta, Sh. G. K.Prasad Gupta and Sh. V. K. Prasad Gupta. That the possession of all the land being subject matter of instant writ petition was taken by government on different dates.”

15. In the rejoinder certain discrepancies have pointed out but essentially the Petitioner has reiterated what he has been stated in the petition. In neither petition is there any attempt made to explain the inordinate delay in approaching the Court for relief.

16. Mr. Puri argued that till the Respondents actually came to take possession of the lands in question the Petitioner was not even aware that lands are subject matter of the land acquisition proceedings.

17. The above explanation is not convincing at all. With the three Awards having been passed way back in 1962 and 1964 it is the predecessor-in-interest of the Petitioner who should have taken steps in that regard. In fact on the Petitioner's own admission reference petition under Section 18 before the Reference Court on which there was adjudication. The assertions by the Petitioner on one hand that neither physical possession was taken or compensation paid for the lands in question and the assertions by the LAC and the DDA on the other disputing that possession was not taken or compensation not tendered gives rise to disputed questions of fact which cannot be examined in the present petition.

18. As far as failure to explain laches, the decision of the Supreme Court in ***Mahavir v. Union of India (2018) 3 SCC 588*** is relevant. The said decision has been reaffirmed by the three judge bench of the Supreme Court in ***Indore Development Authority v. Shailendra*** (*supra*) 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 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. This Court too has in several cases including *Mool Chand v. Union of India 2019 (173) DRJ 595 (DB)* dismissed several petitions on the ground of laches.

20. For the aforementioned reasons both petitions are dismissed on the ground of laches as well as on merits. The interim order dated 4th May 2017 in WP(C) 3830 of 2017 stands vacated.

S.MURALIDHAR, J

I.S.MEHTA, J

MARCH 19, 2019

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