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

+ **W.P.(C) 5346/2016**

SRI BHAGWAN & ORS.

..... Petitioners

Through: Mr. Suraj Kumar, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Pawan Mathur, Standing Counsel
for DDA

Mr. Siddharth Panda for L&B/LAC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

15.04.2019

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1. The prayers in the petition read as under:

“a. Issue a writ of declaration or any other writ of the like nature thereby declaring that the land acquisition proceeding in respect of the land measuring 04 Bighas 02 Biswas comprised of Khasra Nos. 42//12/2 (02 - 14), 42//18/1/2 (01 - 03), 42//24/2 (0 - 05) situated in the Revenue Estate of Village Najafgarh, Delhi initiated vide notification dated 07.04.2006 passed under section 4 of the land acquisition act, 1894 stand lapsed in view of the section 24 (2) of the 2013 Act.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 7th April 2006, followed by declaration under Section 6 of the LAA on 4th April 2007. The impugned Award No. 05/2008-09 was passed on 20th November 2008.

3. In the petition, the Petitioners state that they are the “owners/bhumidars of and in possession of the land measuring 4 Bighas 02 Biswas comprised of Khasra Nos. 42//12/2 (02 - 14), 42//18/1/2 (01 - 03), 42//24/2 (0 - 05) situated at Village Najafgarh, Delhi.” It is stated that the land was never acquired by the LAC and compensation has not been paid till date.

4. In the counter-affidavit filed on behalf of the LAC, it is submitted that the physical possession of Khasra Nos. 42//12/2 (02 - 14), 42//18/1/2 (01 - 03), 42//24/2 (0 - 05) was taken and handed over to the DDA on 23rd November 2012. On the aspect of compensation, it is submitted that the compensation cannot be ascertained as ‘Statement A’ and payment file are not traceable and an FIR has also been registered in that regard.

5. In any event, 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. The fact further remains that the Petitioners have no explanation to offer for the delay in approaching the Court for the relief.

6. 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.”

7. The above decision has been reaffirmed 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/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.”

8. 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*.

9. 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.

10. The order dated 1st June 2016 passed by this court which stood confirmed on 12th December 2017 stands vacated.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 15, 2019/mw