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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5383/2016

OM PRAKASH AND ORS

..... Petitioners

Through: Mr.Vishal Maan, Advocate.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Advocate for R1
and R2.
Mr.Dhanesh Relan, Standing Counsel
for DDA/R3 with Mr.Komal Sarout,
Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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13.08.2019

1. The prayer in the present petition reads as under:

“i. Issue of an appropriate writ, order or directions declaring the entire acquisition proceedings in respect of the land of petitioners comprised in Khasra nos. 1265 (4-14) and 1268/2 (1-16) total admeasuring 6 Bigha 10 Biswas, situated in revenue estate of Village Malikpur Kohi @ Rangpuri, New Delhi to have lapsed in view of section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.”

2. There are 15 Petitioners who state that they are legal heirs of Shri Sher Singh who expired on 20th April 2010. According to the Petitioners, Shri Sher Singh along with Shri Om Prakash, Shri Ved Prakash and Shri Narayan Singh were the recorded co-owners of the subject land situated in the revenue estate of village Malikpur Kohi @ Rangpuri. It is claimed by the Petitioners that they are the lawful owners and are in actual physical possession of the subject land and that they are entitled to seek a declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act').

3. The petition narrates how on 27th June, 1996 a notification was issued under Section 4 of the Land Acquisition Act, 1894 ('LAA') for the acquisition of the subject land as part of the acquisition of a larger extent of 1337 *Bighas* 4 *Biswas* in village Malikpur Kohi @ Rangpuri, for the public purpose of the development of Vasant Kunj Phase-4. This was followed by a declaration under Section 6 LAA dated 10th January, 1997. An award being Award No.2/1998-99 was passed on 6th January, 1999 by the Land Acquisition Collector ('LAC').

4. The petition then straightaway refers to the enactment of the 2013 Act and claims that since the Petitioners have continued to remain in actual physical possession of the subject land and have not been paid compensation, they are entitled to the relief under Section 24(2) of the 2013 Act.

5. Mr. Vishal Maan, learned counsel for the Petitioners, when asked about the delay in approaching the Court for relief, submitted that till such time the Petitioners were not actually dispossessed, the question of them having to seek compensation did not arise. He also referred to an order dated 1st November, 2018 passed by this Court in W.P. (C) 8349 of 2016 (***Shelly v. Govt. of NCT of Delhi***) where in similar circumstances, relief was granted under Section 24 (2) of the 2013 Act, in respect of land located in the same revenue estate of village Malikpur Kohi @ Rangpuri.

6. At the outset, it requires to be noticed that the above order in ***Shelly v. Govt. of NCT of Delhi*** (*supra*) did not take note of the decision of the three Judge bench of the Supreme Court in ***Indore Development Authority v. Shailendra*** (2018) 3 SCC 412, which spoke of unexplained laches and delay in seeking relief as being a bar to the grant of a declaration under Section 24 (2) of the 2013 Act. In paras 128-130 of the said decision it has been held 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.”

7. 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* (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.

8. Even on merits in the present case, the assertion by the Petitioners that they continued to be in actual physical possession of the subject land and had not been offered compensation, gives rise to disputed questions of fact. It is pointed out in the counter-affidavit filed on behalf of the LAC that in view of litigation at the instance of other land owners, questioning the land acquisition proceedings, interim orders had been granted in those writ petitions by this Court, which prevented the Respondents from taking possession.

9. The present Petitioners not having joined those persons cannot possibly seek to take advantage of those orders. Clearly, these Petitioners were taking a chance and, therefore, actually did not come forward to question the land acquisition proceedings for more than three decades. To now permit these Petitioners to seek a declaration of deemed lapsing of land acquisition proceedings would clearly amount to an abuse of the process of law.

10. Consequently, the petition is dismissed on the ground of laches. The interim order passed by this Court on 2nd June, 2016 which stood confirmed

on 12th December, 2017 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 13, 2019

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