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

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+ **W.P. (C) 201/2017**

SUBHASH CHANDER

..... Petitioner

Through: Mr Pramod Kumar and Mr Shalu Jain,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Sanjay Kumar Pathak, Mrs KK Kiran
Pathak, Mr Sunil Kumar Jha and Mr MS
Akhtar, Advocates for LAC/L&B
Mr Arun Birbal with Mr Ajay Birbal,
Advocates for Respondent/DDA.
Mr Kavindra Gill, Advocate for R-4/UOI

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE PRATEEK JALAN

ORDER

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05.04.2019

1. The prayers in the present petition read as under:

“a) pass a writ, order or direction in the nature of writ of declaration, declaring the acquisition proceedings initiated in respect of the land of the petitioner, admeasuring 04 Bighas, out of Khasra No.28/4/1, situated in Village-Bamnoli, Delhi as deemed to have lapsed in view of the provisions of the right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013.

b) Further pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondents not to interfere with the peaceful possession and enjoyment of the land bearing No.28/4/1 (0-4), situated in Village-Bamnoli, Delhi;
and

c) pass such other or orders as deem fit and proper in the circumstances of the case.”

2. According to the narration in the petition, it is seen that notification under Section 4 of the Land Acquisition Act, 1984 ('LAA') was issued on 4th November 2004 followed by declaration under Section 6 LAA on 31st October 2005. The impugned Award No.1/2007-2008/DC(NW) was passed on 6th August 2007.

3. It is stated in the petition that the Petitioner is the recorded owner of the land admeasuring 04 Biswas comprising Khasra No.28/4/1 (hereinafter the 'subject land') situated in village Bamnoli. A copy of the *Khatoni* has been annexed along with the petition in furtherance of this claim. Thereafter the petition straightaway refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') and that since possession of the subject land has not been taken, nor compensation paid, the acquisition proceedings with respect to the same shall deemed to have lapsed.

4. A counter affidavit has been filed on behalf of the LAC, wherein it is stated that the petition is barred by laches. It is further stated that the Petitioner had filed a reference under Section 18 before the Reference Court bearing LAC No.142/09/2008, which was decided on 25th August 2010. Since the compensation amount was disputed, the LAC sent an amount of Rs.13,86,808.23/- by cheque No.810917 dated 16th August 2010 to the Court of the learned Additional District Judge (ADJ) for the land comprising Khasra Nos.23/23/1 (2-08) and 28/4/1 min (0-04). The LAC again sent a cheque No.048770 dated 12th May 2011 of amount Rs.2,20,267/- to the Court of the ADJ. It is stated that as per the revised Enhanced Naksha Muntzamin (ENM), the total compensation amount for Khasra No.28/4/1 min (0-04) is Rs.12855.43/- which was already deposited with the ADJ. A copy of the ENM has been annexed along with the affidavit.

5. It is then stated that after the decision of the Reference Court, the Petitioner filed an appeal LAA No.329/2015 which was allowed on 17th September 2015. In this appeal itself, the Petitioner had admitted that the awarded amount in respect of the acquired land was released on 22nd August 2014 which was encashed in the accounts of the Appellants therein in October 2014. After this, the Petitioner filed an execution petition bearing No. Ex. Civil 16119/2016 in LAA No.329/2015 (LAC 142/09/08) where the amount of Rs.11,68,545/- was attached by the executing Court. In its order dated 19th December 2016, the executing court held as follows:

“The State Bank of India has forwarded a Cheque bearing No. 696269 dated 07.12.2016 in the sum of Rs.11,68,545/- from account of LAC. Let the said amount be kept in a FDR with SBI, Dwarka Court Complex Branch initially for a period of one year which shall be renewed later on from time to time till the DH submits documents along with application for releasing the same in his favour.

The execution petition stands satisfied with liberty to the DH to furnish the requisite documents to receive the payment in question.

Filed be consigned to record room.”

It is submitted that the Petitioner has concealed material facts by stating that compensation has not been paid. As regards possession, it is stated that as per the possession proceedings, it was taken on 6th May 2010.

6. No rejoinder has been filed to the counter affidavit of the LAC to contest the assertions regarding taking over of the possession or as regards compensation with respect to the subject land. In any event, the assertion by the Petitioners that they continued 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 inordinate delay in approaching the Court for the relief.

7. 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.”

8. 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 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 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.”

9. 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*.

10. 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.

S. MURALIDHAR, J.

PRATEEK JALAN, J.

APRIL 05, 2019

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