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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7044/2016

WASEELA BEGUM

.... Petitioner

Through: Mr. Haneef Mohammed, Mr. Anil Vyas, and Mr. Neeraj Bhushan, Advocates.

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Arun Birbal and Mr. Sanjay Singh, Advocates for DDA.
Mr. Yeeshu Jain, Standing Counsel for LAC/L&B along with Ms. Jyoti Tyagi, Advocate.
Mr. Chiranjeev Kumar, Advocate for Respondent No. 1.

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W.P.(C) 7065/2016

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.... Petitioner

Through: Mr. Haneef Mohammed, Mr. Anil Vyas, and Mr. Neeraj Bhushan, Advocates.

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UNION OF INDIA & ORS.

.... Respondents

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Mr. Yeeshu Jain, Standing Counsel for LAC/L&B along with Ms. Jyoti Tyagi, Advocate.
Mr. Chiranjeev Kumar, Advocate for Respondent No. 1.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

06.08.2019

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Signature Not Verified

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W.P.(C) 7044/2016 & 7065/2016

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1. These are two petitions arising out a similar set of facts and are therefore being disposed of by this common order. They were nevertheless heard separately.

2. For the sake of convenience, the facts in W.P. (C) 7044/2016 are being referred to first. The prayers in the said petition read as under:

“(a) issue a writ, order or direction in the nature of certiorari or any other appropriate writ thereby quashing and setting aside the award being award no. 1027A dated 09-11-1968 which was passed under the Land Acquisition Act, 1894 in respect of the petitioner's land measuring 5 Bighas 9 Biswas comprised in Khasra No. 676/188 (0-18) and Khasra No. 677/188 (4-11) in Village Hauz Rani, Delhi,

(b) issue a writ of mandamus or any other writ, order or direction thereby directing the respondents not to, in any manner whatsoever, interfere in the peaceful enjoyment and possession of the land structure standing thereon being measuring 5 Bighas 9 Biswas comprised in Khasra Nos.676/188 (0-18) and Khasra no.677/188(4-11) in Village Hauz Rani, Delhi; which is in possession and occupation of the petitioner; and

(c) Issue writ of prohibition or any other writ or direction thereby prohibiting the respondents from taking over the possession of the said land from the petitioner under the impugned award since the said award has already lapsed; and

(d) call for the entire record of the proceedings from the office of the Concerned Respondent and after examination of the records of the entire proceedings with respect to the said acquisition of land and quash the entire acquisition proceedings qua the said land”

3. When the petitions were taken up for hearing today learned counsel for the Petitioner informed the Court that subsequent to the previous date of hearing, the Petitioner had expired. Although counsel for the Petitioner sought leave to bring the legal representatives (LRs) of the Petitioner on record, the Court is of the view that since the prayers in the petitions are in any event untenable for the reasons explained hereafter, the substitution of the Petitioner by her LRs at this stage is not required.

4. The background facts are that the land in question i.e. 5 *Bighas 9 Biswas* in Khasra No.676/188 (0-18) and 677/188 (4-11) situated in Village Hauz Rani, Delhi (hereafter, 'subject land') was notified under Section 3 of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 on 13th September, 1948. The Land Acquisition Collector ('LAC') made an offer being Offer Number 1027-A in respect of the subject land on 9th November, 1962.

5. As far as the Petitioner is concerned, it is stated that the Petitioner's grandfather Shri Jumman Khan co-owned the subject land and that after his death on 21st April, 1970 his son Fayyaz Mohamed Khan built 24 *jhuggis* on the subject land alongside fencing it by laying wires. A copy of the *Khatauni* for the year 1964-65 has been annexed with the petition. It is further stated that possession of the subject land was with the grandfather-in-law of the Petitioner and after his death, the Petitioner's husband. It is averred that since her husband's death, the Petitioner and her family have been in possession of the subject land. The Petitioner claims interest in the subject land as the legal heir of Shri Jumman Khan.

6. It is averred in the petition that the possession of the subject land has not been taken till date and that physical possession continues to be with the Petitioner. It is further averred that compensation has not been paid to the Petitioner. Thereafter, the petition refers to the enactment of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') and the Petitioner's entitlement to a declaration of deemed lapsing on the ground that neither has possession been taken nor compensation paid.

7. Counter affidavits have been filed on behalf of the LAC and the DDA. In the counter affidavit of the LAC, it is averred that the relief under Section 24 (2) of the 2013 Act cannot be claimed in respect of land acquired under the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 and that, therefore, the petition is not maintainable. Further, all the averments in the petition have been denied.

8. In the counter affidavit filed on behalf of the DDA, it is averred that the petition is barred by delay and laches. It is further averred that Section 24 (2) of 2013 Act would not be applicable in cases of acquisition under the Resettlement of Displaced Persons (Land Acquisition) Act, 1948. It is further averred that by way of a notification dated 22nd February, 1979 the subject land was placed at the disposal of the DDA. It is also stated that actual physical possession of the subject land was handed over to the DDA by the Central Government through the Ministry of Home Affairs, Department of Internal Security, Rehabilitation Division (Settlement) on

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13th August, 1987. It is further averred that presently, a residential colony, viz. Saket Colony and the Hauz Rani Road are situated on the subject land.

9. It is also averred that for the subject land, the Petitioner has filed two writ petitions: the present writ petition and W.P. (C) 7065/2016. As regards compensation, it is averred that status of disbursal of compensation to individual owners can only be confirmed by the "appropriate department of the Government".

10. A rejoinder has been filed on behalf of the Petitioner to the counter affidavit of the DDA, where the averments in the writ petition have been reiterated. It is further averred that there is no limitation period for the application of Section 24 (2) of the 2013 Act and that, therefore, such a submission is untenable. It is also averred that Section 24 (2) is a "substantive provision of general law that would apply to all compulsory acquisitions". Reference has also been made to the civil suit and its dismissal by order dated 7th March, 2017 for non-prosecution. It is contended that since the suit was not considered on merits and the Ld. Civil Judge could not have granted the relief of deemed lapsing under Section 24 (2) of the 2013 Act, the Petitioner has filed the present petition.

11. As far as the companion petition W.P. (C) 7065/2016 is concerned, the prayers are nearly identical, with only difference being the extent of the lands in Village Hauz Rani. Both the LAC and the DDA have filed counter affidavits with averments nearly identical to their averments in the counter affidavits filed in W.P. (C) 7044/2016. To the counter affidavit of the DDA,

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the Petitioner has filed a rejoinder similar to that filed in W.P. (C) 7044/2016.

12. The assertion of the Petitioner that she continues to remain in possession of the lands in question and had not been paid compensation for the same, gives rise to disputed questions of fact, which cannot be examined in the present petition.

13. Secondly, it is evident that the petitions are barred by delay and laches. They seek relief in respect of acquisition proceedings that stood initiated way back in 1948 and where possession of the land was handed over to the DDA in 1979.

14. Another, and a central aspect of the matter, is that the acquisition proceedings pertaining to the subject land were initiated and completed under the Resettlement of Displaced Persons (Land Acquisition) Act, 1948. Section 24 (2) of the 2013 Act would not apply to such acquisition. Section 24 (2) of the 2013 Act reads as under:

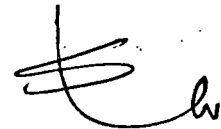
“(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited

in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

15. A bare perusal of the aforesaid provision makes it clear that the relief of declaration of deemed lapsing is contemplated only where the acquisition proceedings were initiated under the Land Acquisition Act, 1894 (LAA) and culminated in an Award under Section 11 of the LAA. Since that is not the case in the present petitions, the Petitioner cannot be granted the relief of a declaration of deemed lapsing under Section 24 (2) of the 2013 Act.

16. For the aforementioned reasons, the writ petitions are dismissed. The interim order dated 12th August, 2016 as confirmed on 14th November, 2017, in both petitions, stand hereby vacated. The dismissal of these petitions will not come in the way of the LRs of the Petitioner availing other remedies that may be available to them in accordance with law.



S. MURALIDHAR, J.



TALWANT SINGH, J.

AUGUST 6, 2019

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