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

+ **W.P.(C) 7708/2016**

AA APARTMENT PVT LTD Petitioner

Through: Mr. Ujjwal Kumar, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Vikas Mahajan, CGSC with Mr.
Akash Verma for UOI.
Mr. Siddharth Panda for L&B/LAC

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA

ORDER
29.03.2019

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1. The prayers in the petition read as under:

“i. Pass a writ, order or direction in the nature of certiorari thereby quashing acquisition proceeding in pursuance to section 4 notification dated 25.11.1980 and Award Number 15 dated 05.06.1987 pronounced by Land Acquisition Collector with respect to the land admeasuring area 4 Bigha and 16 Biswa bearing Khasara Number 1525 min (1-1), 1526/2/2 min (3-0) 85 1526/1/2 min (0-15), situated in the Revenue Estate of village Chhattarpur, Tehsil Mehrauli, New Delhi.

ii. Pass such other and further order/directions as deemed fit and proper under the facts and circumstances of the case.

iii. Cost of the proceedings be also awarded to the humble petitioner.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 25th November 1980, followed by declaration under Section 6 of the LAA on 7th June 1985. The impugned Award No. 15 was passed on 5th June 1987.

3. It is averred in para 3 of the petition as under:

“That the aforesaid land was owned by Mrs. Archna Khaitan W/o Sh. Dhruv Khaitan R/o E-8, Pancheel Park, New Delhi. That Mrs. Archna Khaitan W/o Sh. Dhruv Khaitan executed General Power of Attorney in favour of Mr. M. R. Sehgal S/o Sh . H. R. Sehgal R/o D-289, Defence Colony New Delhi, who further executed Special Power of Attorney in favour of Mr. Atul Agnihotri S/o Late Sh. Om Prakash R/o Andheria Mor, New Delhi C/o K. K. Kakar, 41, Punita, 77 Colaba, Bambay to sell the aforesaid land. Accordingly Mrs. Archna Khaitan through Mr. Atul Agnihotri sold the subject land to the petitioner company vide sale deed dated 02/11 /1998”.

4. There is a reference in the petition to the failed challenge to the Section 4 LAA notification in CWP 426 of 1981 (*Munni Lal v. Lt. Governor of Delhi*) and another failed challenge to the Section 6 LAA notification in CWP 1639 of 1985 and how a difference in view between two Division Benches (DBs) led to a reference being made to a Full Bench of this Court. The petition then refers to the fact that one aspect of the challenge to the land acquisition concerning the limitation for issuing a declaration under Section 6 LAA was decided against the land owners by a Full Bench of this Court in *Balak Ram Gupta v. Union of India AIR 1989 Del 239* and the other aspect concerning Section 5-A of the LAA which was decided by a Division Bench of this Court in *Balak Ram Gupta v. Union of India (1989) 37 DLT 150* (hereafter *Balak Ram DB*), in favour of the land owners. However, the present petition is silent on whether the predecessor-in-interest of the present Petitioner had also joined in the said challenge.

5. This is important because if the Petitioner’s predecessor-in-interest did not in fact join those Petitioners in the challenge, then the benefit of those judgments would not enure to the present Petitioner. This has been clarified by the

Supreme Court of India in ***Delhi Administration v. Gurdip Singh Uban*** (1999) 7 SCC 44, following an earlier judgment of a three-Judge Bench in ***Abhey Ram v. Union of India*** (1997) 5 SCC 421. The said three-Judge Bench had effectively overruled the view of a two-Judge Bench in ***Delhi Development Authority v. Sudan Singh*** (1997) 5 SCC 430 which had held that the decision in ***Balak Ram DB*** was a judgment in rem and that the entire land acquisition proceedings stood quashed. In ***Delhi Administration v. Gurdip Singh Uban*** (*supra*), it was clarified that the decision in ***Balak Ram DB*** would apply only to those land owners who had in fact filed the petitions in which the said order was passed. The Supreme Court re-affirmed its judgment in ***Delhi Administration v. Gurdip Singh Uban*** (*supra*) by another separate order on 18th August 2000 reported as ***Delhi Administration v. Gurdip Singh Uban 2000 Supp (2) SCR 496***.

6. The resultant position is that barring the petitioners who were actually parties to the writ petitions in which the decision in ***Balak Ram DB*** was rendered, the land acquisition proceedings would stand valid as far as those who did not challenge it. Thus, as far as the present petition is concerned, it would fall in the latter category. Therefore, clearly the predecessor-in-interest of the Petitioner accepted the validity of the land acquisition proceedings and never challenged it.

7. The petition thereafter straightaway refers to Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act') and claims that since neither possession of the land in question has been taken nor compensation paid the Petitioner is entitled to a declaration of deemed lapsing of land acquisition proceedings thereunder.

8. In the counter-affidavit filed on behalf of the LAC, a reference is made to the challenge to the land acquisition proceedings by ‘interested person’ which resulted in conflicting verdicts by two DBs- one in favour of the land owners (upheld by the Supreme Court in *Om Prakash v. Union of India (2010) 4 SCC 17*) and the other in favour of the government (also upheld by the Supreme Court in *Union of India v. Shiv Raj (2014) 6 SCC 564*). It is pointed out by the LAC that:

“However, it is pertinent to mention here that the petitioner has neither placed on record to show that the above said notifications or the award was ever challenged by them nor have made any submission in the writ petition. Thus, the present petitioner has accepted the notifications and the award made with respect to the land in question. Therefore, the present petition is not maintainable.”

9. It is further submitted by the LAC that the possession of Khasra Nos.1525 min (1-1),1526/2/2 min (3-0) & 1526/1/2 min (0-15) could not be taken as a stay was granted in the present case in CWP No. 988/86 against dispossession of land. It is however submitted that compensation amount of Rs. 581866.84/- for the said land was sent to the RD in the name of Shri Sudershan Kanta. It is further stated:

“Further, the present petitioner has not placed on record any document to show its title with respect to the land in question. As per the records, the petitioner is not the recorded owner. The petitioner is claiming to have purchased the land from one Mrs. Archana Khaitan through Mr. Atul Agnihotri on 02.11.1998 but no documents have been placed to substantiate the claim.”

10. The rejoinder filed by the Petitioner to the counter affidavit of LAC merely reiterates the averments in the petition. It is stated that the LAC had only taken ‘formal possession’ in 1966 and has not taken the ‘actual physical possession’ till date. The Petitioner reiterates that they have not received any compensation. It is only with the rejoinder that the Petitioner has enclosed a copy of the sale

deed. The Petitioner has not offered any explanation for not enclosing this document with the petition.

11. It is necessary to note a few aspects at this juncture. There is no explanation in the petition for the inordinate delay in approaching the Court for relief. A copy of the sale deed dated 2nd November 1998 was enclosed only with the rejoinder. A perusal thereof reveals that it is executed at Mumbai. The vendor is shown to be represented by a ‘Special Attorney of Shri M R Sehgal who is the General Attorney of Mrs. Archana Khaitan’. In this case, the Notification under Section 4 of LAA was passed on 25th November 1980 and the Award was passed on 5th June 1987 whereas the Petitioner states that he bought the land on 2nd November 1998. The Petitioner having full knowledge about the status of the land in question and without taking permission from the competent authority as required under Delhi Land (Restriction of Transfer) Act, 1972 has purchased the said lands. The validity of the above documents are, therefore, extremely doubtful. In the circumstances, the Court is not satisfied that the Petitioner has been able to even *prima facie* demonstrate its locus standi to file this petition and claim compensation.

12. In any event, the assertion by the Petitioners that they continue to remain in possession of the land in question or that compensation was not tendered gives rise to disputed questions of fact which cannot be examined in this petition. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

13. 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.”

14. The above decision was 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 negated 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.”

15. 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 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*.

16. 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.

17. The interim order passed by this court on 2nd September 2016 which stood confirmed on 22nd January 2018 stands vacated.

S.MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 29, 2019

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