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

+ **W.P.(C) 7734/2016**

ANIL KUMAR SEHGAL 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 3 Bigha 6 Biswa bearing Khasara Number 1605/1/1 and 3 Bigha 18 Biswa in Khasara Number 1606/2, 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 that:

“That the aforesaid land was owned by Dr. Surinder P. S. Purthi S/o Sh. A. S. Purthi R/o 8 A, Oyster Apartment, Colaba, Bombay-400005. That Dr. Surinder P. S. Purthi executed General Power of Attorney in favour of Shri Balram Bhasin S/o Shri Mool Raj R/o Panchsheel Park, New Delhi to sell the aforesaid land. Accordingly Dr. Surinder P. S. Purthi through Shri Balram Bhasin sold the subject land to the petitioner vide sale deed dated 16/05/1979.”

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 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. In para 10 of the petition it is averred:

“That Division Bench of this Hon’ble Court has allowed Writ petition of similarly situated person in W.P. (C) 2827/2014 titled as

"Praveen Khurana Versus Union of India 85 Ors." vide it's judgment/order dated 16.09.2016 & W.P. (C) 8867/2014 titled as "M/s. M. R. Towers Pvt. Ltd. Versus Union of India & Ors." vide it's judgment/order dated 22.09.2016 thereby holding the initiation of acquisition under the Land Acquisition Act 1894 and related award to be deemed to have lapsed."

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. The LAC further submits that since there were a large number of petitions challenging the above notifications, there was a stay granted in most of these petitions which is why the LAC was prevented from completing the land before 31st December 2013. It is submitted that even if the Petitioner was the owner before the commencement of the acquisition proceedings he has not produced any valid document to prove his ownership on the said land nor has he challenged the proceedings earlier.

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 he has not received any compensation. Without referring to the sale deed dated 16th May 1979 in the body of the rejoinder, the Petitioner has simply enclosed a copy thereof for the first time with the rejoinder. The Petitioner has not stated why he could not enclose it with the petition.

11. A copy of the sale deed dated 16th May 1979 was enclosed only with the rejoinder. A perusal thereof reveals that it is illegible in most parts and does not appear to be a registered document. It does not inspire confidence. In the circumstances, the Court is not satisfied that the Petitioner has been able to *prima facie* demonstrate his locus standi to file this petition and claim compensation.

12. In any event, the assertion by the Petitioner he continues 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 Petitioner has 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 observations have been reiterated in the judgment of the three Judge Bench 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.”

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 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*.

16. The orders dated 16th September 2016 of the DB of this Court in W.P. (C) 2827/2014 (*Praveen Khurana v. Union of India*) and the order dated 22nd September, 2016 in W.P. (C) 8867/2014 (*M/s. M. R. Towers Pvt. Ltd. v. Union of India*) were passed prior to the decisions of the Supreme Court in *Mahavir v. Union of India (supra)* and *Indore Development Authority v. Shailendra (supra)*, and, therefore do not assist the case of the Petitioner here.

17. 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.

18. 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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