

\$~47

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4289/2015 & CM APPL. 7779/2015**

GOVERDHAN

..... Petitioner

Through: Mr. B.S. Mathur and Mr. Rajat
 Mathur, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
 Advocates for LAC/L&B.
 Mr. Pawan Mathur, Standing Counsel
 DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **20.02.2019**

SANJEEV NARULA, J.

1. The prayer in this writ petition reads as under:-

“a) Issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition alongwith Award No 14/2005-06 pronounced on 17.8.2005 with respect to the land of the Petitioner bearing Khasra No. 3//22/1 (1-0), 3/23/1 (1-0), 20/12 min (0-10), 3//12 (4-12), 19/1 (2-4), 22/2 (1-13), 23/2 (1-14), 17//22/3 (2-6), 23/1 (3-4), 26/3/2 min (1-8), total measuring 18 Bigha 1 Biswas situated in the revenue estate of Village Pansali, Delhi; having been lapsed; and

b) Pass any other order or writ or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the

present case.”

2. In the present case, a Notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) in respect of land bearing Khasra No. 3//22/1 (1-0), 3/23/1 (1-0), 3//12 (4-12), 19/1 (2-4), 22/2 (1-13), 23/2 (1-14), 17//22/3 (2-6), 23/1 (3-4), 26/3/2 min (1-8), total measuring 18 Bigha 1 Biswas situated in the revenue estate of Village Pansali, Delhi (hereinafter, the “subject land”) was issued on 21st March, 2003 for public purpose namely Rohini Residential Scheme, followed by declaration under Section 6 of the Land Acquisition Act (hereinafter referred to as “LAA”) on 18th March, 2004. Thereafter an Award bearing No. 14/05-06 was rendered on 17th August 2005.

3. The Petitioner submitted that between 1990 and 2003 i.e. before the notification of the land acquisition proceedings, structures were erected for the use of Petitioner on some portion of the agricultural land in question. Now, the land forms part of unauthorized colonies viz. Sri Enclave and Kailash Vihar, Pansali. Further, it was submitted that the compensation in part of the aforesaid land has been taken by the Petitioner under protest. However, the Respondents were not allowed to take the actual physical possession of the aforesaid land till date, as the same was partly built-up and remained under cultivation of the Petitioner.

4. Thus, the Petitioner claims that possession of the subject land has not been taken though compensation has been paid to the recorded owners/Petitioner, under protest. On account of the above, it is submitted

that Petitioner is entitled to a declaration under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act'), that the acquisition has lapsed.

5. On the contrary, the learned Counsel for the Land Acquisition Collector (LAC) in its counter affidavit has submitted that the actual vacant physical possession of the land falling in Khasra No. 3//22/1 (1-0), 3/23/1 (1-0), 3//12 (4-12), 19/1 (2-4), 22/2 (1-13), 23/2 (1-14), 17//22/3 (2-6), 23/1 (3-4), admeasuring situated in the revenue estate of Village Pansali, Delhi was taken on 23rd November 2005 by preparing possession proceedings and the same was handed over to the DDA on the spot. It was however submitted that the possession of the land falling in Khasra no. 26/3/2 (1-08) could not be taken and Khasra no. 20/12 min (0-10) was not acquired through the acquisition proceedings under the award in question. Further, it is submitted by the LAC that the Petitioner duly applied for release of compensation and the same was paid to the Petitioner vide cheque number 280659 dated 21st December 2005 amounting to Rs. 1,27,59,380/- (Rupees One Crore Twenty Seven Lac Fifty Nine Thousand Three Hundred Eighty Only). The LAC has also annexed a copy of the possession proceedings with its counter affidavit.

6. The stand of LAC is fortified by the counter affidavit filed by the DDA. DDA in its counter affidavit has disputed the ownership claim of Petitioner over the subject land. It is submitted that the physical possession of the land falling in Khasra No. 3//12(4-12), 19/1(2-04), 22/1(1-00), 22/2(1-13), 23/1(1-00), 23/2(1-14), 17//18(4-07), 22/3(2-06), 23/1(3-04), has been handed over to the Respondent-DDA by the LAC/Land and Building

Department, Govt. of NCT of Delhi on 23rd November 2005 and the same was transferred to JE/RPD IV on 23rd November 2005. However, physical possession of the land falling in Khasra No. 26//3/2(2-18) has not been handed over to the Respondent-DDA. It is further averred in the counter affidavit that the physical possession of the land falling in Khasra No. 20/12/1 (3-06), 12/2(1-10) was not acquired under the acquisition proceedings in question. Further, it is stated that the petition is barred by delay and laches for failure of the Petitioner to challenge the acquisition proceedings for several years.

7. Petitioner in its rejoinder to the counter affidavit of LAC and DDA has reiterated its stand in the Petition.

8. It is an admitted position that the land in question has been acquired for Rohini Residential Scheme. Therefore the Petitioner's contention of being in possession of the subject land has to be examined in light the order of the Supreme Court dated 18th October 2016 in SLP (C) No.16385-88/2012 (**Rahul Gupta vs. DDA**). In the said order it has been held that in respect of land pertaining to the Rohini Residential Scheme, the DDA is deemed to be in possession of the lands acquired for that purpose. The said order reads as under:

“I.A. Nos.50-53 of 2015 Heard Mr. V. Giri, learned Senior Counsel appearing for the applicants and perused the interlocutory applications.

In view of the order dated 10.3.2015, passed by this Court in SLP(C) Nos.16385-16388 of 2012, and a subsequent order dated 28.1.2016, passed in the same special leave petitions, the interim

order passed by the High Court of Delhi on 04.3.2015 in W.P.(C) No.1915/2015, (Annexure A-4 in the instant interlocutory applications), is liable to be vacated, and is accordingly vacated.

We grant liberty to the Delhi Development Authority to produce a copy of this order in all matters, pertaining to land acquisition relating to the Rohini Residential Scheme, pending before the High Court, for vacation of similar interim directions.

It is made clear that in case the applicants have re-entered possession or otherwise, they shall vacate the said land and hand over its possession forthwith to the Delhi Development Authority, failing which it shall be assumed to be in possession of the Delhi Development Authority, after the expiry of ten days from the passing of the instant order.

With the aforesaid directions, these interlocutory applications stand disposed of.”

(emphasis supplied)

9. Therefore, the plea of the Petitioner qua retaining possession over the subject land is misconceived and untenable. Notwithstanding the above, the contention of the Petitioner at the highest gives rise to a disputed question of fact, in view of the contrary stand taken by the LAC and DDA, *vis-a-vis* the possession.

10. This petition has been filed invoking the extraordinary power of the Court under Article 226 of the Constitution of India. It is a settled position of law that this Court, in the exercise of Writ Jurisdiction, does not delve into disputed question of rights and title of the parties. Thus matters in which disputed questions of fact are involved, cannot be decided in a summary proceeding based solely on the pleadings of the parties. Such

disputed matters must be decided by the Civil Courts after recording of due evidence in the matter.

11. Further, there is no explanation whatsoever offered in the petition for the inordinate delay in coming forward to file the present petition. The acquisition proceedings in respect of the subject land were conducted in the year 2005, whereas the present petition has been filed after more than a decade and no steps have been taken by the Petitioner in the intregnum. The petition is obviously barred by laches.

12. In ***Mahavir v. Union of India (2018) 3 SCC 588***, the Supreme Court held 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.”

13. The aforesaid Judgment has been considered by the Supreme Court in the decision of ***Indore Development Authority v. Shailendra*** reported at ***(2018) 3 SCC 412***, relevant portion of which is reproduced hereunder:-

“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 W.P.(C) Nos. 946/2017 & 948/2017 Page 5 of 7 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 W.P.(C) Nos. 946/2017 & 948/2017 Page 6 of 7 would be received or entertained by the courts.”

14. Also, the admitted position is that the land in question is part of an unauthorised colony. This Court has consistently been refusing the relief of declaration of deemed lapsing of land acquisition proceedings when the property in question is part of an unauthorised colony. In its order dated 10th January, 2019 in WP (C) No. 3630/2018 (**Akhil Sibal s. GNCTD**) it was observed in this context by this Court as under:

“16. It appears that the Petitioners are pursuing parallel proceedings and seeking different reliefs in respect of the same lands in question – one is to seek regularization by contending that the building on the land in question is part of an unauthorized colony, the other is to invoke Section 24 (2) of the 2013 Act, to seek lapsing of the land acquisition proceedings. In the considered view of the Court, the attempt at invoking Section 24 (2) of the 2013 Act is, in the W.P. (C) Nos. 946/2017 & 948/2017 Page 7 of 7 circumstances, misconceived. Clearly,

therefore, the present petitions are an abuse of the process of the Court where the facts speak for themselves.

17. Further, the manner in which the facts have been narrated, a relief under Section 24 (2) of the 2013 Act, is not even capable of being granted in either of the petitions. In similar circumstances, this Court had in its order dated 19th December, 2018 in W.P.(C) No.190/2016 R. Bhagwan Batra v. Government of NCT of Delhi, rejected the prayers of the Petitioners where they were seeking a similar relief in respect of the land in an unauthorized colony i.e. Guru Ram Das Nagar. The Court there has pointed out that the Petitioners should be pursuing their case for regularization.

18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting regularization orders. A large portion of these colonies are by way of encroachment on public land. Some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premise on which such regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those structures. That very basis gets contradicted as some of them tried to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable.”

15. Similar view has been expressed by this court in its decision dated 17th January 2019 in W.P (C) 4528 of 2015 (***Mool Chand v. Union of India***) and 25th January 2019 in WP (C) 3438 of 2015 (***Krishna Devi v Union of India***), wherein petitions seeking a declaration under Section 24(2) of the 2013 Act, have been dismissed for the grounds and reasons stated above.

16. Following the aforementioned decisions and in the light of the facts and circumstances listed out hereinbefore, the Court dismisses the present

petition both on the ground of laches as well as merits. In light of the abovementioned order, the pending applications stands disposed of and the interim order passed on 1st May 2015 stands vacated.

SANJEEV NARULA, J

S. MURALIDHAR, J

FEBRUARY 20, 2019

Bisht