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

+ **W.P.(C) 5427/2015**

VIJAY SINGH & ORS. Petitioner

Through: Mr Rajat Sehgal, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr Harish Kumar Garg with Ms Payal
Agrawal, Advocates for R-1 & R-2
Ms Shobhana Takiar with Ms Shivani Jain,
Advocates for DDA
Mr Sidharth Panda, Advocate for LAC/L&B

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

ORDER
04.04.2019

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1. The prayers in the petition read as under:

“(i) Issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to the said land of the Petitioner’s having lapsed and further quashing the impugned notification No. F.9(16)/80/L&B dated 25.11.1980 issued under Section 4, of the Land Acquisition Act, 1894 (hereinafter referred to as the ‘Old Act’) and declaration under Section 6 of the Land Acquisition Act, 1894 being notification No. F.9(28)/85/L&B/LA (Notification No. S.9(28)/85/L&B) dated 18.06.1985 and the Award No.23/87-88 with 03 Bighas and 15 Biswas land of the Petitions comprised in Khasra Nos. 871/454(0-10), 943/623(1-19), 838/357(1-16), situated in revenue estate village Maidangarhi, NCT of Delhi; Issue a Writ of Mandamus and/or any other writ, order and direction of the similar nature issuing directions to the Respondents to correct all revenue records and others statutory documents recording the

possession ownership of the Petitioners over the 03 Bighas and 15 Biswas land of the Petitions comprised in Khasra Nos. 871/454(0-10), 943/623(1-19), 838/357(1-16), situated in the revenue estate of Village Maidangarhi , Mehrauli South Delhi and to release the said land;

(ii) Pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice.”

2. According to the narration in the petition, it is seen that notification under Section 4 of the Land Acquisition Act, 1984 ('LAA') for the acquisition of the land in question was issued on 25th November 1980 followed by declaration under Section 6 LAA on 7th June 1985. The impugned Award No.23/87-88 was passed on 17th June 1987.

3. The Petitioners, who are 17 in number, state that they are the owners in possession of the aforementioned land, and that they have inherited it from their forefathers who were farmers and cultivators. A typed copy of the *Khatauni* for the year 1990-91 dated 27th November 2014 has been enclosed with the petition. It is further stated that the ownership of the Petitioners has been duly recorded in the revenue records i.e. Khasra Girdawari.

4. The Petitioners state that the acquisition proceedings were challenged in W.P (C) 1639/1985 (***Balak Ram Gupta v. Union of India***) and that by judgment dated 18th November 1988 of this Court the acquisition proceedings were quashed. However, it is stated further in para 6.9 that the Supreme Court finally held in ***Delhi Administration v. Gurdip Singh Uban (1999) 7 SCC 44*** that the quashing of notification in ***Balak Ram Gupta (supra)*** could not be treated as quashing of the entire acquisition proceedings. 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 prays for a declaration

of deemed lapsing of the acquisition proceedings on the ground that no compensation has been paid to the Petitioners.

5. In the counter affidavit filed on behalf of the LAC, it is submitted that the impugned Award No.23/87-88 dated 17th June 1987 was issued only after inviting and considering the claims of all interested persons. Further, possession of the land in question was taken and handed over to the beneficiary department on 16th June 1987. As regards compensation, it is stated that with respect to 13/15th share in the subject land, it was “paid to the recorded owners on 23.09.87, 24.09.87, 30.09.87 and 14.09.87” and the remaining 2/15th share was sent to the RD. 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 stated that a large number of writ petitions were filed by interested persons, in which various interim orders were passed, and for a long period till the High Court and then the Supreme Court till the said petitions were dismissed, the Respondents were prevented from utilizing the subject lands for the planned public purpose before 31st December 2013. It is also stated that possession of large tracts of land sought to be acquired has already been taken and the land vests free from encumbrances with the Government.

6. In the counter affidavit filed by the DDA, it is submitted that the Petitioners have not produced any title documents or revenue records to prove their title or ownership of the land in question and hence have no *locus* to file the present petition. It is stated that the Supreme Court has already clarified that “the judgment

passed in WPC No.1639 of 1985 titled as '*Balak Ram Gupta v/s Union of India*' was a judgment *in personam* and not a judgment *in rem*", and hence is of no help to the Petitioner. It is stated that the possession of the acquired land was handed over to the DDA by the LAC/L&B Department on 16th July 1987, and as per records, an amount of Rs 100 crores was remitted by the Central Government on account of 13 villages in south Delhi including the village Maidan Garhi. A copy of the possession proceedings has been enclosed along with the affidavit.

7. In the rejoinder filed by the Petitioners, most of the averments as set out in the petition have been reiterated and the submissions made by the Respondents in their counter affidavits have been simply denied. It is stated that the said land is lying vacant and only 'symbolic or paper' possession could have been taken. It is submitted that no compensation was paid to the Petitioners. It is further stated that this Court has by judgment dated 27th April, 2015 in W.P. (C) No. 9052 of 2014 (*Ram Kumar v. Govt. of NCT of Delhi*) declared that the acquisition in respect of certain other land situated in village Maidangarhi has lapsed. It is pointed out that the land of the Petitioners is also in village Maidangarhi.

8. It requires to be noted that the present petition is silent on whether the predecessor-in-interest of the present Petitioners were parties to the judgments in *Balak Ram Gupta* or *Gurdip Singh Uban* or *Om Prakash* or even *Union of India v. Shiv Raj* (*supra*). In fact in para 8 (vii) of the rejoinder the Petitioners admit that: "The Petitioners herein have never challenged the Award except filing of the present Petition."

9. This is important because if the Petitioners' 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 Petitioners. This has been clarified by the Supreme Court of India in ***Delhi Administration v. Gurdip Singh Uban*** (*supra*), 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 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*** 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*** 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***.

10. The resultant position is that barring the petitioners who were actually parties to the writ petitions in which the decision in ***Balak Ram*** or any of the subsequent decisions referred to hereinabove 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 Petitioners accepted the validity of the land acquisition proceedings and never challenged it.

11. The assertions by the Petitioners that they continued to remain in possession of the land in question and they have not been paid compensation give 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, in respect of an Award that was

passed way back in 1987.

12. 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.”

13. The above decision has been reaffirmed by the judgment of a 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 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.”

14. 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 essentially 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*.

15. As far as the order of this Court in *Ram Kumar v. Govt. of NCT of Delhi* (*supra*) is concerned, it was passed at a time when the decisions of the Supreme Court in *Mahavir v. Union of India* (*supra*) and *Indore Development Authority v. Shailendra* (*supra*) had not been delivered. Therefore, the said order is of no assistance to the Petitioners.

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. The interim order dated 29th May 2015 as confirmed on 4th January 2018 is hereby vacated.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 04, 2019

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