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

+ **W.P.(C) 8097/2014**

ARUN JAIN & ORS.

..... Petitioners

Through: Mr. D.R. Khatri, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul CGSC with Mr. Soumava Karhakar and Mr. Prashant Singh for UOI.
Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi Advocate for LAC/L&B.
Mr. Ajay Verma, Advocate for DDA.

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

ORDER
25.03.2019

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1. The prayers in the present petition read as under:

“a) issue a writ of Certiorari quashing the Notification No. F. 11(19)/2001/L&B/LA/20112 dated 21.03.2003 under Section 4 and Declaration/ notification No. I F.11(16)/2004/L&B/LA/28281 dated 19.03.2004 under Section 6 of Land Acquisition Act, 1894 and award No.12/2005-2006/DC(NW) dated 01.08.2005, pronounced by Land Acquisition Collector (N-W) in the open court on 05.08.2005 in respect of the lands and structures of the petitioners situated in the Revenue estate of Village - Barwala, Delhi in NCT of Delhi, as being illegal, malafide and unconstitutional, vague and null and void;

b) issue a direction to the Respondents to give back the land of the Petitioners acquired by the Respondents in pursuance of the issuance of the impugned notifications and Award; and

OR IN THE ALTERNATE

issue a direction to the Respondents to give Compensation to the Petitioner for their acquired land to the tune of four (04) times the present market value in case of rural areas and twice (02) in case of urban areas.

c) call for the entire records of acquisition proceedings from the offices of the concerned Respondents and after examination of the records, quash the entire acquisition proceedings; and

d) pass such other or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. In the present petition, the main relief sought is for a declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act'). The declaration is sought in respect of land situated in the Revenue Estate of Village Barwala in Delhi. The acquisition is by means of notification dated 21st March 2003 issued under Section 4 of the Land Acquisition Act, 1894 (LAA) followed by a declaration dated 19th March 2004 under Section 6 LAA and an Award No. 12/2005-06/DC (NW) dated 5th August 2005. The public purpose of the acquisition was for the Rohini Residential Scheme.

3. The case of the Petitioners is that they have not received any

compensation and still remain in possession of the land in question and therefore are entitled to the relief under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act').

4. In the counter affidavit of the LAC, it is stated that the physical possession of the subject land was taken on 6th October 2005 and handed over to the DDA on spot. It is further stated that compensation could not be paid and the same is lying in the RD except Khasra No. 26/17 min (1-04) for which the compensation was sent to the Court of ADJ under Section 30-31 of LAA.

5. The DDA in its counter affidavit submitted that the petition is severely barred by delay and laches. It is also submitted that the physical possession of the land falling in Khasra No. 25//11 (4-16), 25//19 min (3-12), 25//20 (4-16), 25//21 (4-1 6), 26//14 (4-16), 26//15 (4-16), 25//16 min (1-15) and 26/17 (4-16) was taken by the LAC and handed over to the DDA on 6th October 2005 and 17th July 2007 except for the land falling in Khasra No. 25/11 (0-04), 25//19 , (4-16), 25//20 (0-02) and 25//21 (0-08) , the physical possession of which could not be taken. On the aspect of compensation it is submitted that DDA remitted to L&B Deptt. a total compensation of Rs.3,02,35,05,048/- against Award No. 12/2005-06.

6. Inasmuch as the lands were acquired for the Rohini Residential Scheme, on the question of actual physical possession, a reference needs to be made to the orders passed by the Supreme Court on 10th March 2015, 28th January

2016 and 18th October 2016 in SLP (C) Nos. 16385-88/2012 (*Rahul Gupta v. Delhi Development Authority*) and in the interlocutory applications ('I.As') in the said SLPs. Although, in the order dated 10th March 2015, the Supreme Court referred to the acquisition of land for the Rohini Residential Scheme in Sectors 34, 35, 36 and 37, in the subsequent order dated 18th October 2016, it was made clear that the effect of the said order of the Supreme Court was to be applied to all the lands acquired for the Rohini Residential Scheme. In the order dated 18th October 2016 while disposing of various I.As in the aforementioned SLPs, the Supreme Court directed as under:

“Heard Mr. V. Giri, learned Senior Counsel appearing for the applicants and perused the interlocutory applications.

In view of the order dated 10.03.2015, passed by this Court in SLP (C) Nos. 16385-16388 of 2012, and a subsequent order dated 28.01.2016, 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)

7. These directions were repeated in the remaining I.As which were disposed of on the same date i.e. 18th October 2016. In effect therefore, the position is that if anyone still in possession of lands acquired for the Rohini Residential Scheme had not surrendered possession thereof to the DDA within ten days of the order dated 18th October 2016, then the possession thereof was deemed to be with the DDA. It would no longer be open to such persons to contend that actual physical possession of the lands in question remains with the Petitioners.

8. This legal position has been clarified by this Court in its order dated 22nd November 2018 in W.P. (C) 51118/2016 (***Jawahar Singh v. Lt. Governor***) and reiterated in the order dated 25th January 2019 in W.P. (C) 3438/2015 (***Krishna Devi v. Union of India***).

9. As regards the claim for compensation, the fact remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief. The claim for compensation is being made with reference to an Award that was passed on 5th August 2005. In ***Indore Development Authority v. Shailendra* (2018) 3 SCC 412** the Supreme Court 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/negatived, 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.”

10. 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 not on the question of the petition seeking declaration under Section 24 (2) of the 2013 Act being barred by laches. This legal position was explained by this Court recently in its decision in *Mool Chand v. Union of India 2019 (173) DRJ 595 DB*.

11. In the circumstances, it is not possible to grant the Petitioners relief under Section 24 (2) of the 2013 Act. The writ petition is dismissed both on the ground of laches as well as on merits. The interim orders, if any, stand vacated.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 25, 2019

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