

\$~40, 41, 66

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

+ **W.P.(C) 7973/2016**

SUBE SINGH

..... Petitioner

Through: Mr. Akhil Sachar, Advocate.

versus

LT GOVERNOR NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi for LAC.
Mr. Ajay Verma, Advocate for DDA.

W.P.(C) 8228/2016

KRISHAN KUMAR & ANR.

..... Petitioners

Through: Mr. Akhil Sachar, Advocate.

versus

LT GOVERNOR NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi for LAC.
Mr. Ajay Verma, Advocate for DDA.

W.P.(C) 8224/2016

SATISH KUMAR & ORS.

..... Petitioners

Through: Mr. Akhil Sachar, Advocate.

versus

LT GOVERNOR NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi for LAC.
Mr. Ajay Verma, Advocate for DDA.

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

ORDER
% **25.03.2019**

Dr. S. Muralidhar, J.:

1. In all these petitions, the facts more or less are similar and the reliefs sought are almost identical. They are accordingly being disposed of by this common order. Nevertheless, each of the petitions was heard separately.
2. In each of these petitions, 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 dated 5th August 2005. The public purpose of the acquisition was for the Rohini Residential Scheme. The only difference in the petitions is as regards the khasra Nos. and the extent of land.
3. At the outset, Mr. Akhil Sachar, learned counsel for the Petitioners informs the Court that the Petitioner in W. P. (C) 7973 of 2016 (Sube Singh) expired two months ago. The petition ought to be dismissed as having

abated with there being no application for substitution of the said Petitioner by his legal representatives. In any event, on merits the petition has to fail for the reasons explained hereafter.

4. In these petitions two facts are admitted by the Petitioners. One is that each of them has received compensation in terms of the land acquisition Award. Second, that each of the Petitioners had earlier challenged the land acquisition proceedings along with the batch of petitions of which W.P. (C) 2501 of 2003 (***Naresh Kumar & Ors. v. Union of India***) was the lead petition. By a judgment dated 17th April 2013, a Division Bench (DB) of this Court dismissed the writ petition *inter alia* holding as under:

“We, at the inception, put to learned senior counsel for the petitioners as to why and how can we permit a settled position to be unsettled after a decade. This is so as the petitioners chose to remain silent when the acquisition proceedings were initiated, accepted the same, took compensation and sought references for enhancement of compensation. The aforesaid facts have to be examined in the conspectus of the purpose for which the land was acquired which was planned development of Rohini Residential Scheme. In Delhi there has been large scale acquisition by the DDA which was originally the only authority which was engaged in development of land and meeting the housing needs of the people. No doubt in this process while large tracts of land were acquired, some land remain undeveloped and the DDA could not protect its land pool with the result encroachment took place. These encroachments have been on such a massive scale with practically no prevention that a large part of habitants of Delhi reside in these colonies. The Government has come up now with schemes of regularization of these colonies.

Rohini Residential Scheme like other schemes is in the nature of a mini township. Such a mini township will contain all the

essential features, i.e. residential areas, commercial areas, institutional areas. Thus, while there will be development of residential plots, there would also be development of commercial areas to take care of the needs of residents. These may be shopping arcades or there may be hotel sites, etc. Similarly there would be institutional requirements like for purpose of schools, hospitals, community facilities, etc. If land is allotted for all these purposes it cannot be said that the purpose of acquisition has disappeared or there is mala fide exercise of the power of acquisition. The DDA would spend large amount of monies on development of the area and, thus, to have a transparency auction is often the method, adopted for allotment, at least, with commercial areas while in case of residential areas there may be auction of plots or particular schemes under which plots and flats are allotted. It may be possible even to allot land to certain societies for their needs. Similarly hotel sites and commercial buildings are often auctioned.

We are, thus, of the view that the nature of allegations made in this writ petition cannot be said of such a nature as to suggest that there is a mala fide exercise of power or improper use of the land, which has been acquired.

.....

We are of the view that the petitioners cannot after such a long period seek to rake up the issue of acquisition merely on the basis of some recent pronouncements by the Hon'ble Supreme Court even when they accepted the compensation qua acquisition of the land by neither challenging the acquisition proceedings nor the award but on the other hand were only interested in enhancement of compensation for which they have sought a reference. They have also recovered the compensation and for them now to say that they are willing to return that compensation after number of years and should be permitted to assail the acquisition proceedings would not, in our view, be the appropriate direction to be passed.

In view of these facts and circumstances, we are not inclined to entertain the petition seeking to challenge the acquisition

proceedings both on grounds of delay and laches as also on account of the acquiescence and conduct of the petitioners qua the acquisition proceedings.

Dismissed.”

5. On 3rd February 2015 the Supreme Court of India passed the following orders in SLP (C) No. 17121/2013 (*Naresh Kumar v. Union of India*) and a batch of special leave petitions (SLPs), including those by the present Petitioners, all of which were directed against the above order dated 17th April 2013 of the DB of this Court in W.P. (C) 2501/2013 and batch. The order reads as under:

“SLP (C) Nos. 17121, 33188 of 2013 & SLP (C) 17482, 13358 of 2014

Shri T. N. Singh and Dr. Surat Singh, learned counsels for the Petitioners in respective matters on instructions, seek permission of this Court to withdraw these petitions.

Permission sought is granted.

The special leave petitions are disposed of as withdrawn.

Contempt Petition (S) No. 319 of 2013 in SLP (C) 17121 of 2013

In view of the withdrawal of the special leave petition, nothing survives for consideration and decision in this contempt petition. The contempt petition is dismissed in terms of the signed order.”

6. Thus no liberty was granted to the Petitioners in the above matters to challenge the land acquisition proceedings afresh. The order dated 17th April 2013 passed by the DB of this Court in *Naresh Kumar* (*supra*) rejecting the challenge to the land acquisition proceedings *qua* the lands in village Barwala for the Rohini Residential Scheme attained finality. On this short

ground the present petitions deserve to be dismissed.

7. Nevertheless, the case of the Petitioners is that they still remain in possession of the land in question and are, therefore, 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').

8. 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)

9. 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 them.

10. 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**).

11. As regards the question of actual possession, Mr. Sachar places reliance on the decisions in ***Prahlad Singh v. Union of India* (2011) 5 SCC 386**, ***Raghubir Singh Sehrawat v. State of Haryana* AIR 2012 SC 468**, ***Patasi Devi v. State of Haryana***, ***Shakuntala Yadav v. State of Haryana* AIR 2016 SC 1612** and ***Velaxan Kumar v. Union of India* AIR 2015 SC 1462** to urge that possession as contemplated in law was in fact not taken. This plea is futile as none of the cited cases dealt with lands acquired for the Rohini Residential Scheme in respect of which it is the order of the Supreme Court in ***Rahul Gupta v. DDA* (supra)** which alone would apply.

12. Likewise, reliance placed by Mr. Sachar on the decisions in ***Kailash Chand Gupta v Union of India W.P. No. 2960/2014***, ***DDA v. Kailash Chand Gupta C.A. 9595/2016***, ***Brijesh Aggarwal v. Govt. of NCT of Delhi W.P. (C) No. 2176/2015***, ***Rajesh Yadav v. Govt. of NCT Of Delhi W.P. (C) No. 1652/2015***, ***DDA v. Rajesh Yadav W.P. (C) No. 8672/2016*** and ***Vijender Kumar & Ors. v. Govt. of NCT of Delhi & Ors. W.P. (C) No. 1631/2015*** to urge that there was an admission by the DDA and LAC to urge that since lands acquired in Village Barwala could admittedly not be taken possession of, it would imply that actual physical possession of the land is still with the Petitioners has to be rejected for the simple reason that the Supreme Court has now in ***Rahul Gupta v. DDA*** made it clear that even if actual physical possession had remained with some of the occupants, it would no longer be so after the expiry of ten days after the orders of the Supreme Court unless they have actually been surrendered to the DDA in the meanwhile. In such event, DDA shall be deemed to be in actual physical

possession of the land in question.

13. The further 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/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 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 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. In the circumstances, it is not possible to grant the Petitioner 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

nd

