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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5384/2015

VIMAL KUMAR SHARMA

.... Petitioner

Through: Mr. Sahil Mongia and
Mr. Abhishek Sharma, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ANR.

.... Respondents

Through: Mr. Siddharth Panda,
Advocate for LAC.

Mr. Dhanesh Relan, Standing
Counsel for DDA with Advocate
Komal Sorout.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

02.08.2019

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

“a. Issue a writ of declaration or any other writ of the like nature thereby declaring that the land acquisition proceedings in respect of Khasra Nos. 350(4-16), 357(4-16), 358(4-16), 360(4-16), 361(4-16), 362(4-16), 363(4-2), 364(5-4), 365(2-0), 366(4-16), 379 (4-16), 380(3-16), 381(5-12), 382(4-16), 388 (0-6), 390(4-16), 391(2-14), 392(4-18), 393(2-10) and 394(2-9) admeasuring about 84 Bighas and 02 Biswas situated in Pul Prahlad, New Delhi initiated by the Respondent vide its notification

dated 23.01.1965 passed under section 4 of the Land Acquisition Act, 1894 stand lapsed in view of the section 24 (2) of the 2013 Act; And/or

b. Issue a writ of mandamus or in the nature of mandamus directing the respondents to de-notify the Remaining Land falling under Khasra Nos. 350(4-16), 357(4-16), 358(4-16), 360(4-16), 361(4-16), 362(4-16), 363(4-2), 364(5-4), 365(2-0), 366(4-16), 379 (4-16), 380(3-16), 381(5-12), 382(4-16), 388 (0-6), 390(4-16), 391(2-14), 392(4-18), 393(2-10) and 394(2-9) admeasuring about 84 Bighas and 02 Biswas situated in Pul Prahlad, New Delhi.”

2. The backgrounds facts are that the land in question i.e. 84 *Bighas* 2 *Bighas* comprised in Khasra Nos. 350 (4-16), 357 (4-16), 358 (4-16), 360 (4-16), 361 (4-16), 362 (4-16), 363 (4-2), 364 (5-4), 365(2-0), 366(4-16), 379 (4-16), 380(3-16), 381(5-12), 382 (4-16), 388 (0-6), 390(4-16), 391(2-14), 392(4-18), 393(2-10) and 394 (2-9) situated in Pul Pehladpur, New Delhi was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 23rd January, 1965 for the public purpose of “planned development of Delhi”. This was followed by a declaration under Section 6 dated 13th January, 1969. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 63/82-83 on 13th January, 1983.

3. As far as the Petitioner is concerned, it is stated that he is the legal heir of one Harish Chandra Sharma and that by way of a registered Family Settlement dated 1st May, 1988, which was arrived at between the legal heirs of Harish Chandra Sharma, the Petitioner became the absolute owner of the subject land. It is averred that possession of the Khasra Nos. 387 (3-12),

388 (4-10), 389 (4-16), 395(1-12), 396 (4-16), 397 (4-16) and 398 (5-0) admeasuring about 33 *Bighas* 12 *Biswas* was taken on 8th May, 1987. It is also averred that compensation in respect of these Khasra Nos. was also paid. It is averred that physical possession of the subject land was however not taken and compensation has neither been paid nor tendered to the Petitioner. Thereafter, the petition straightaway refers to the enactment of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') and the Petitioner's entitlement to a declaration of deemed lapsing under Section 24 (2) of the said Act on the ground that neither has possession been taken nor compensation paid.

4. Counter affidavits have been filed on behalf of the LAC and the DDA. In the counter affidavit of the LAC, it is averred that possession of the Khasra No. 388 (4-16) was taken on 14th March, 1983 and handed over to the DDA. It is also averred that compensation has also been paid to the recorded owner and that as per the judgment passed in RFA No. 517/95 "the Petitioner has also received the enhanced compensation". In the counter affidavit filed on behalf of the DDA, it is averred that possession of Khasra No. 359 (4-16) was handed over to the DDA on 4th March, 1983 and has been further transferred to the Horticulture Department on 22nd March, 1983. It is further averred that a sum of Rs. 88,44,065/- has also been released by way of cheque no. 541822 dated 1st January, 1983.

5. On 31st July, 2019 the LAC filed an additional counter affidavit. It is stated therein the land falling in Khasra Nos. 350(4-16), 357(4-16), 358(4-16), 360(4-16), 361(4-16), 362(4-16), 363(4-02), 364(5-04), 365(2-0), 366(4-16), 379(4-16), 380(3-16), 381(5-12), 382(4-16), 388(0-6), 390(4-16), 391(2-16), 392(4-18), 393(2-10), 394(2-09) was notified under Section 4 of the LAA. It is averred therein that possession of Khasra No. 388 (4-16) was taken on 4th March, 1983 and handed over to the beneficiary department and compensation was paid to the recorded owner. It is averred that possession of the remainder of the land could not be taken due to a stay granted by this Court in W.P.(C) 354/1983. It is also averred that a prohibitory order was passed by the Tax Recovery Officer, by which the LAC was “restrained from making any payment to Sh. Harish Chandra Sharma for Khasra Nos. 350.357 to 366, 376, 380 to 382, 387 to 389”. A copy of the letter dated 21st August, 1986 has been annexed with the petition.

6. No rejoinder has been filed by the Petitioner to the counter affidavit of the LAC or the DDA. Be that as it may, the assertion of the Petitioner that possession of the subject land has not been taken and compensation not paid, gives rise to disputed questions of fact, which cannot be examined in the present petition. The fact further remains that there is no explanation in the petition for the inordinate delay in approaching the Court for relief.

7. On the aspect of laches, in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 a three Judge Bench of the Supreme Court of India observed as under:

“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.”

8. 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* (2014) 3 SCC 183 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 its decision in *Mool Chand v. Union of India* (2019)173 DRJ 595 (DB).

9. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 27th May 2015 read with the order dated 17th April 2018 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 02, 2019

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