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

+ **W.P.(C) 9238/2014**

JAI SINGH JOON & ORS.

.....Petitioners

Through: Mr Rajiv Kumar Ghawana and Ms
Akshita Chhatwal, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr Yeeshu Jain, Standing Counsel for
LAC/L&B with Ms Jyoti Tyagi,
Advocates.

Mr Arun Birbal and Mr Ajay Birbal,
Advocates for DDA.

Mr Parvinder Chauhan and Mr Nitin
Jain, Advocates for DUSIB.

CORAM:

JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

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23.07.2019

Dr. S. Muralidhar, J.:

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

“a) issue a writ, order or declaration declaring that the entire acquisition proceedings i.e. Section 4 notification dated 30.7.1998, Section 6 declaration is dated 4.8.1998 and the award no. 18/2000-2001 announced on 12.3.2001 in respect of the Petitioners land comprised in Khasra nos. 1/1, 1/2, 2 and 5 admeasuring 9 bigha, situated in the Revenue Estate of Village Bhalswa Jahangirpuri, Delhi have lapsed in view of sub-section 2 of section 24 of "The Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013"; and

b) issue a writ of mandamus directing the respondents not to in any manner whatsoever; interfere with the peaceful enjoyment and possession of the said lands presently in possession and occupation of the Petitioner.”

2. There are six Petitioners who claim to be the recorded owners of the land measuring 9 Bighas forming part of Khasra No. 1/1, 1/2, 2 and 5 in Village Bhalswa Jahangirpur, Delhi (hereafter referred to as ‘subject land’).

3. The narration in the petition reveals that a notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) for acquisition of the subject land was issued under Sections 4 and 17 (4) of the LAA on 30th July, 1998. This was followed by a declaration dated 4th August, 1998 under Section 6 LAA. The Land Acquisition Collector (‘LAC’) passed the Award No. 18/2000-01 on 12th March, 2001.

4. The petition states that certain other land owners filed a writ petition in this Court challenging the aforementioned land acquisition proceedings. By the judgment dated 31st May, 2002 in *Praveen Jain v Union of India (2002) 99 DLT 646* the Section 4 LAA notification was quashed. The petition refers to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘2013 Act’) which came into effect on 1st January, 2014. It is further averred that in similar circumstances where the Petitioners have not been offered compensation and continued to remain in actual physical possession of the land in question, this Court has declared the land acquisition proceedings as having lapsed. Reference is made to the orders passed in W.P.(C) No. 2806/2004 (*Jagjit Singh v UOI*) and W.P. (C) No. 1897/2014 (*Ashwal*

Vadera v UOI) and W.P.(C) No. 2759/2014 (*Girish Chhabra v L.G.*). Reference is also made to the decision in *Pune Municipal Corporation v. Harakchand Misrimal Solanki (2014) 3 SCC 183*.

5. When the present writ petition was listed for hearing on 23rd December, 2014, while directing notice to issue therein, this Court directed the parties to maintain *status quo* as to the nature, title and possession to the subject land. This interim order stood confirmed on 18th January, 2018.

6. In response to the notice issued in the present petition, a counter affidavit has been filed by the LAC (North) in which it is stated, *inter alia*, that the land in Khasra No.1/1 (0-04); 1/2 (6-05) and 5 (3-19) in Village Bhalswa, Jahangirpuri is under ownership of different recorded owners. It is stated that possession of the subject land was duly taken on 2nd September, 1998 and compensation was paid to the Petitioner Nos. 1 to 3 on 4th September, 2001 and the Petitioner Nos. 4 and 5 on 23rd July, 2001. In paragraph 8 of the affidavit, it is averred as under:

“8. That the answering respondents have already taken possession of large tracts of land sought to be acquired under the above said notifications. It is submitted that quashing of the notification qua these Khasra numbers would frustrate the acquisition and would also undue prejudice to the public revenue. Further, land owners whose lands have been acquired vide the above said award, have also assailed the award for enhancement of compensation before the Hon'ble High Court and also before the Hon'ble Supreme Court of India.”

7. A separate counter affidavit has been filed by the Delhi Urban Shelter & Improvement Board ('DUSIB') (Respondent No3) confirming that possession of the subject land was taken over on 2nd September, 1998, which

fact is recorded in the award itself. As far as the land in Khasra No.2 Min, it is stated that it is acquired under Award No. 24/2005-06 and possession thereof was taken on 26th April, 2008. As far as the payment of compensation is concerned, it is stated in paragraph 7 as under:

“That however, for the sake of keeping the records straight, it is denied that the entire compensation has not been paid to the Petitioners. It is pertinent to mention here that the aforesaid Award No. 18/2000-2001 was pronounced on 12.03.2001. Thereafter, following payments have been made to Petitioners:

S. No.	Name	Amount (in Rs.)	Dated
1.	Jai Singh Joan	4,66,286.21/- 9578.04/- (TDS)	04.09.2001
2.	Tara Chand	4,66,286.2 /- 9578.49/- (TDS)	04.09.2001
3.	Munish Gupta	4,66,286.21/- 9578.49/- (TDS)	04.09.2001
4.	R. C. Khatri	4,66,286.21/- 9578.491- (TDS)	23.07.2001
5.	V. K. Khatri	4,66,286.21/- 9578.49/- (TDS)	23.07.2001
6.	Narender Gupta	4,66,286.21/- 9578.49/- (TDS)	20.10.2001

8. In paragraph 8 it is stated that the Petitioners are falsely claiming to be in possession of the land in question whereas it is actually in possession of the DUSIB. The public purpose for acquisition of the land was rehabilitation of a JJ Cluster.

9. On 5th February, 2018, an additional affidavit was filed by the LAC (North) reiterating that not only was vacant physical possession of land other than that in Khasra No.2 taken over way back on 2nd September, 1998, but even compensation was paid, on the dates earlier mentioned.

10. Additional affidavit likewise has been filed by the DUSIB, confirming that possession of land in Khasra No.2 was taken over on 26th April, 2008.

11. A further additional affidavit was filed by the LAC (North) on 11th September, 2018. In paragraph 7 of the additional affidavit it was stated that in respect of Khasra No. 2 Min (1-12), part compensation had been paid of Item No.07 to namely, Nand Kishore at Item No. 7/1 and Prithiviraj at Item No.7/2 on 23rd April, 1998.

12. When this case was listed for hearing on 19th December, 2018, learned counsel for the Petitioners stated that in relation to the averments made in paragraph 7 of the additional affidavit, the Petitioners had preferred an application under the Right to Information Act, 2005 ('RTI Act'). He sought time to file a further affidavit.

13. Today in Court Mr Ghawana handed over a rejoinder affidavit and drew the attention of the Court to the Annexure-B thereto, which was a reply dated 15th March, 2019 received by him from the Public Relation Officer (HQ), District North in response to the application under the RTI Act. The said information confirms that the land in Khasra No.2 (1-12) has been acquired under the Award No. 24/2005-06; that possession thereof was taken over and handed over to the L&B on 26th April, 2008 and as per Statement-A "compensation in respect of above KH number has not been showed paid". He also referred to Annexure-A to the rejoinder affidavit, which was a copy of the original notification dated 4th March, 2003 under Section 4 of the LAA where the land of the Petitioners in Khasra No.2, was not included. According to him, in the absence of a valid Section 4 LAA notification, there could not have been any valid award and therefore Award No. 24/2005-06 was *void ab initio*. He placed reliance on the decisions in

Narendrajit Singh v State of U.P. 1970 (1) SCC 125 and *Sandeep Kakkar v Union of India 111 (2004) DLT 291 (DB)*. Even with respect to taking of possession of the land in question, he placed reliance on the decision in *Competent Authority v. Barangore Jute Factory (2005) 13 SCC 477* and submitted that in the present case, the statutory requirement for taking valid possession was not fulfilled.

14. Having considered the above submissions, the Court would like to first observe that the present Petitioners at no point in time questioned the land acquisition proceedings, which culminated in Award Nos. 18/2000-01, or even Award No.24/2005-06 under which the land in Khasra No.2 (1-12) in Village Bhalswa Jahangirpuri, Delhi was acquired. The details given are of cases instituted by other land owners and not these Petitioners. The Petitioners have no explanation to offer for the inordinate delay in approaching the Court for relief *qua* the aforementioned acquisition.

15. On the aspect of laches, the Supreme Court has in *Indore Development Authority v. Shailendra (2018) 3 SCC 412* 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.”

16. 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 its decision in *Mool Chand v. Union of India 2019 (173) DRJ 595 DB*.

17. That apart, from the affidavits filed by the Respondents, it is clear that the Petitioners' assertion that they continued to remain in possession of the lands in Khasra Nos. 1/1, 1/2, 2 and 5 gives rise to disputed questions of fact. Even their claim of entitlement to compensation, which according to them was not tendered, has been disputed by the Respondents. The information obtained through the RTI Act, only adds further to this dispute. These disputed questions cannot possibly be examined in the present petition.

18. The decision cited by the counsel for the Petitioners are to no avail, considering the fact that the Petitioners have been sleeping over the matter for more than a decade. In view of the law explained by the Supreme Court as above, which has been followed by this Court in a large number of decisions including *Mool Chand v. Union of India 2019(173) DRJ*

595[DB], the reliefs as prayed for cannot be granted.

19. The petition is accordingly dismissed. The interim order dated 23rd December, 2014, which was affirmed on 18th January, 2018, is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 23, 2019
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