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

+ **W.P.(C) 11342/2016**

PHOOLWATI GUPTA & ORS Petitioner
Through Dr.Surat Singh & Mr. Alok
Upadhyaya, Advocates

versus

UNION OF INDIA & ORS Respondents
Through Mr. Brajesh Kumar, Advocate for
Respondent/IOI
Mr. Arjun Pant, Advocate & Mr. Dhanesh Relan,
Standing counsel for Respondent/DDA
Ms. Astha Tyagi, Advocate for
Respondent/LAC/L & B

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **24.01.2019**

1. The prayer in the present petition reads as under:-

“I. Issue a Writ of Certiorari or any other Writ of like nature declaring that the land acquisition proceedings under Award no. 22/70-71 (Supplementary) dated 19/11/1970 of Rectangle no. 15 Killa no. 21 (0-19), Rectangle 16 Killa no. 32, 23, 24, 25 out of Block 'G' Jagat Puri Colony and also out of Rectangle 16 Killa no. 22, Rectangle no. 29 Killa no. 3, 4, 5 and Rectangle no. 15 Killa no. 21 (19-9), Rectangle no. 16 Killa no. 22 (1-2), 23 (1-8), 24(0-9), 25 (2-19), 28/2 (2-10), 29 (4-8), 30 (2-8), 32 (4-16), 33/1 (1-15), Rectangle no. 29 Killa no. 3 (2-0), 4 (1-13), 5 (3-3), 14/2 (2-1), 27/1 (0-19), Rectangle no. 32 Killa no. 23, 24 & 25 (6-3), Rectangle no. 36 Killa no. 11 (4-15), Rectangle no. 38 Killa no. 14 (1-0), Rectangle no. 45 Killa no. 5/1 & 5/2 (3-0), Rectangle no. 49 Killa no. 1 (0-12), 3(2-18), Khasra 51/6 (0-10), Khasra no. 54 /3 Killa no. 19/3 & 20/1 (3-8) ,19/4 & 20/2 (3-7), 21 (4-16), 23/1 (5-11), 23/2 (2-14), 22/1 & 22/2 (4-16),

Rectangle no. 63 Killa no. 8(3-12), 18(4-16), 23 (5-16) and Khasra no. 1646/624-628 (11-6) measuring 120 Bigha 19 Biswa in favor of Late Shri Jawahar Lal Gupta S/o Shri Narshing Dass and Khasra no. 51/6 (2-0), Khasra 57/1 (4-14), Rectangle no. 45 Killa no.1/2 (0-10) in favor of Smt. Phoolwati Gupta W/o Shri Jawahar Lai Gupta measuring 7 Bigha 4 Biswa located in Khureji Khas Illaqa Shahdara, Delhi (subject land) to be declared as lapsed under Section 24(2) of New Act "Right to Fair Compensation and Transparency in Land Acquisition, rehabilitation and Resettlement Act, 2013" as well as the land may be ordered to be returned under Section 101 of New Act or market rate compensation may be given;

Pass any other Order which this Hon'ble Court may deem feet and proper in the interest of justice.”

2. The narration in the petition reveals that that the Petitioners are descendants of one late Shri Jawahar Lal Gupta and are relying on sale deeds in favour of him and his wife Smt. Phoolwati Gupta to claim title to the aforementioned lands located in Khureji Khas, Illaqa Shahdara Delhi.

3. The further facts revealed in the petition are that pursuant to a notification dated 13th November, 1959 under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) followed by declaration under Section 6 LAA, the impugned Award No.22/70-71 (Supplementary) was passed.

4. Without mentioning in the petition what the Petitioners have been doing since, it is straightway mentioned that although possession of the land was taken, no compensation has been paid for the same and it has not been utilised till date, and that accordingly they are entitled to declaration under Section 24 (2) of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act').

5. Pursuant to the notice issued in the petition, a counter affidavit has been filed by the DDA on 17th April, 2017 raising a preliminary objection as to delay and laches in the filing of the writ petition. Further it is stated that the physical possession of the land in question was not handed over to the DDA. In any event, the taking over possession from them is not disputed by the Petitioners themselves. The DDA has further mentioned that compensation to the tune of over nearly Rs. 8.14 crores was remitted through cheque No.139519 to the L & B Department on 14th September, 2006.

6. In a separate counter affidavit filed by the LAC on 29th May, 2015 it is pointed out that the Petitioners do not have the locus to file the present petition since they purchased the lands subsequent to the declaration under Section 6 of the LAA on 18th March, 1966. Further copies of the Award No.22/70-71 dated 29th July, 1970 and Supplementary Award dated 19th October, 1970 are annexed. The status report with respect to the Award number No. 22/70-71 is annexed. The status report states that the recorded owners of the said Khasra Numbers are not the Petitioners as their names have not been mutated in the records. It is further stated that possession was taken over of the lands in different Khasras between 17th April, 1972 and 22nd July, 1981. As per the record compensation was deposited in the Revenue Deposit (RD) in respect of some of the Khasra Numbers. As regards the remaining Khasra Numbers, possession could not be taken up as the property was built up and in respect of those Khasra Numbers as well, compensation was deposited in the RD.

7. No rejoinder affidavit has been filed to either of the counter affidavits and therefore the question of taking up of possession and payment of compensation are both disputed questions of fact which cannot be examined in these proceedings.

8. In any event this petition is barred by laches. There is no explanation anywhere in the petition for the inordinate delay in approaching the Court for relief. A three Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 has held:

“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.”

9. The Court would also like to observe here that although on a limited aspect the correctness of the above decision has been referred to a larger Bench of the Supreme Court in its order dated 6th March, 2018 in ***Indore Development Authority v. Shyam Verma (2018) 3 SCC 405***. The question of the relief under Section 24(2) of the 2013 Act being barred by delay and laches has not been referred. This legal position has been explained to the Court in its order dated 17th January 2019 in WP (C) No.4528/2015 (***Mool Chand v. Union of India***).

10. For the aforementioned reasons, this writ petition is dismissed both on the ground of laches as well as on merits.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 24, 2019

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