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

+ **W.P.(C) 6559/2017**

**SHAMBHU SHARMA ALIAS SHMABHU DAYAL SHARMA AND
ORS** Petitioners

Through: Mr. Chatanya Siddhartha, Advocate.

versus

GOVT OF NCT OF DELHI AND ANR Respondents
Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.

**CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA**

**ORDER
25.01.2019**

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SANJEEV NARULA, J.:

1. The prayer in this writ petition reads as under:

“(a) Issue an appropriate direction/order/or writ including a writ of mandamus declaring the land acquisition process initiated under the Land Acquisition Act, 1894 for the land in question measuring 62 bigha 00 biswa bearing in 25 Khasra Nos. 18//13 (4-16), 23//20 (4-1), 35//5 (4-16), 35//6 (4-16), 35//15 (2-8), 35//17 (4-9), 35//24 (2-12), 36//13 (4-12), 36//18 (4-5), 42//10/1 (1-11), 10/2 (2-18), 43//1 (4-12), 43/73 (2-8), 43/74(4-12), 42/719 (4-16), 43/712 (2-12), 43/21/1 (0-12), 43/721/2 (1-16) of revenue estate of village Mohamadpur Majri Post Office-Karala, Delhi-110081 as having been lapsed by virtue of the provisions of Section 24(2) of The Right to Fair Compensating and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(b) Issue further a Writ of certiorari or any other Writ of like

nature thereof, declaring the impugned award No. 20/2005-2006/DC (NW) dated 18.11.2005, Notification under Section 4 of Land Acquisition Act, 1894 dated 21.03.2003 and Declaration under Section 6 of Land Acquisition Act, 1894 dated 19.03.2004 qua the land in question of the petitioners falling in revenue estate of village Mohamadpur Majri, Delhi-110081 as null and void in the eyes of law inasmuch as land acquisition process qua the land in question is deemed to have lapsed in view of provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(c) Issue a prohibition directing the Respondents not to interfere with the peaceful enjoyment and possession of the petitioners in any manner whatsoever of the land in question and structures standing thereon and restraining/prohibiting the respondents from taking possession of the lands which are still in physical possession and enjoyment of the petitioners situated in village-Mohamadpur Majri, North-West, Delhi in pursuance of the issuance of the impugned notifications and award; and

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

2. In present case, a Notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 23rd March 2003 followed by declaration under Section 6 of the LAA on 19th March 2004 for public purpose namely “Rohini Residential Scheme”. Thereafter an Award bearing No. 20/2005-06 was rendered on 18th November 2005.

3. Petitioners submit that they are land owners of the subject land and details of each of the Petitioners are summarized as under:

“a) Kishori Lai S/o. Late Sh. Mahadev resident of B-24, Budh Vihar, Phase-II Sharma Colony, Delhi-110086 is owner of the

following Khasra Nos. 35//17 (4-9), 35//24 (2-12), 43/21/1 (0-12), admeasuring total area 7 bigha 1 biswa in the revenue estate of village Mohammadpur Majri, Delhi inasmuch as he has purchased the land through registered sale deed dated 29.09.1989.

b) Shambhu Sharma alias Shambhu Dayal Sharma son of Late Sh. Madan Lai Sharma resident of R-18, Budh Vihar Colony, Phase-1, Delhi-110086 is owner of the following Khasra Nos. 18//13 (4-16), 23//20(4-01), 43//3(2-8), 43//4 (4-12), 43//12(2-12), 43//21/2 (1-16), 42//10/2(2-18), 42//10/1(1-11), 43//1(4-12), 36//13(4-12) 18(4-5), 42//19 (4-16) admeasuring total area 42 bigha 19 biswa in the revenue estate of village Mohammadpur Majri, Delhi vide registered/unregistered General Power of Attorneys/Agreement to Sale etc.

c) Smt. Suman wife of Sh. Bhagirath Raj Sharma R-18, Budh Vihar Colony, Phase-1, Delhi-110086 is owner of the following Khasra Nos. 35//5(4-16), 35//15 (2-08) admeasuring total area 7 bigha 4 biswa in the revenue estate of village Mohammadpur Majri, Delhi vide registered/unregistered General Power of Attorney.

d) Smt. Malti wife of Late Sh. Madan Lai Sharma R-18, Budh Vihar Colony, Phase-1, Delhi- 110086 is owner of the following Khasra Nos. 35/76(4-16) admeasuring total area 4 bigha 16 biswa in the revenue estate of village Mohammadpur Majri, Delhi.”

4. The Petitioners also submit that though the award was made in 2005, they have not been paid compensation for the same and physical possession of the subject land continues to be with the Petitioner’s/land owners.

5. Land Acquisition Collector (LAC) has in its counter affidavit submitted that physical possession of the land was taken on 2nd August 2006 and

handed over to the respective authority-DDA. LAC's stand qua payment of compensation and possession as stated in the counter affidavit is as follows:

Item No.	Recorded Owners	Khasra nos.	Date of possession	Remaining land	Compensation
57	Prakash S/o Narayan Das (full share)	23/20 (4-01)	(3-17) was taken on 02.08.2006	(0-4)	Not Paid
96	M/s Amritsar Construction Company Full Share	35//05 min (4-16) 35//05 (4-16) 35//07 (4-16) Total 14 Bigha 8 Biswas	35//05 min (2-08) 35//06 min (4-16) 35//07 min (4-14) 02.08.2006	35//5 min (2-08) 35//15 Min (0-2)	Not Paid
348	Gram Sabha (full Share)	36//13 (4-12) 36//18 (4-5) Total 8 Bigha	36//13 min (4-4) Total 8 Bigha and 17 Biswas (4-05)	36//13 m in (0-8) 36//18 min	

		and 17 Biswas			
349	Gram Sabha (full Share)	18//13	18/13 min (4-06) on 02.08.2006	18//13 min (0-10)	Not Paid
350	Gram Sabha (full Share)	35//17 (4-9) 35//24 (2-12) Total 7 3 Bigha and 01 Biswas	35//17 min (0-2) 35//24 min (1-06) total 3 Bigha and 06 Biswas on 02.08.2006	35//17 (2-9) 35//24 (1-06)	Not Paid
204 to 206	Samundar Singh S/o. Ratan Singh, Harinder Singh S/o Rattan Singh and Raj Guru S/o. Rajinder Singh, having 1/3 rd share	42//10/1 (1-11), 43//1 (4-12)	42//10/1 (1-11), 43//1 (3-12) total 5-03 on 02.08.2006	43//1 Min (1-00)	Compensation paid for 42//10/1(1-11) and 43/1 min (2-02) of Rs. 2,92,002/- vide cheque no. 295503 to 295506 dated 14.11.2011 and Rs.

					3,71,639/- each vide cheque no. 295500 to 295502 dated 14.12.2011 Payment of Khasra No. 43//1 min (2- 10) is not paid to the recorded owners
129	Mahendra S/o. Ratan Singh	42//10/2 (2-10) 43//21/2 (1-16) total 4 Bigha and 14 Biswas	42//10/2 (2-18) 43//21/2 (1- 16) 02.08.2006	NIL	Compensation paid of Rs. 15,39,651/- vide cheque no. 295697 dated 17.11.2011 and Rs. 14,86,559/- vide cheque no. 935330 dated

					07.11.2012.
60 to 62	Baljit Singh, Jagjit Singn and Balwan Singh S/o. Khem Chand Having 1/3 rd share	43//19 (4-16) 43//3 (4-16) 43//4 (4-12) 43//12 (2-12) Total 16 Bighas 16 Biswas	43//19 (4- 16) 43//3 (3-16) 43//4 (4-12) 43//12 (2-12) Total 15 Bighas 16 Biswas 02.08.2006	43//3 (3- 16)	Compensation paid for Khasra No. 43//4 (2- 06) and payment for remaining Khasra Numbers not made.
58	Attar Singh s/o. rampat (full Share)	43//12 (1-04)	43//12 min (1-04)	NIL	Not Paid
59	Sarojbala w/o. Balwant Singh (full share)	43//12 (1-04)	43//12 (1- 04)	NIL	Not Paid
203	Kishori Lal s/o. Mahadevi (full Share)	43//21/2 (0-12)	43//21/2 (0- 12)	NIL	Paid vide cheque no. 958159 dated 07.02.20

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6. The Petitioners in their rejoinder affidavit to counter affidavit of LAC have pointed out that the subject land located in Rama Vihar Colony is part of a provisionally authorised colony. Petitioners have denied that physical possession of the subject land has been taken by the Respondent. Thus it becomes a disputed question of facts. Petitioners have averred that as per the LAC records, compensation has not been paid for Khasra No. 348-350, for which, it is claimed that Petitioner No.1 herein had purchased land from the recorded owner on various dates prior to the initiation of land acquisition proceedings.

7. This petition has been filed invoking the extraordinary power of the Court under Article 226 of the Constitution of India. It is a settled position of law that, this Court, in the exercise of Writ Jurisdiction, does not delve into disputed question of rights and title of the parties. Thus matters in which disputed questions of fact are involved, cannot be decided in a summary proceeding based solely on the pleadings of the parties. Such disputed matters must be decided by the Civil Courts after recording of due evidence in the matter.

8. There is no explanation whatsoever offered in the petition for the inordinate delay in coming forward to seek relief under Section 24 (2) of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter “the 2013 Act”). The

Award for the subject land was passed in 2005, whereas the present petition has been filed after more than a decade and no other steps have been taken by the Petitioners. The petition is obviously barred by laches.

9. After the passing of the 2013 Act, the Petitioners have approached this court claiming that they are in possession of the land in question. There is no document annexed in the petition or any averment made by the Petitioners that would even remotely indicate that Petitioners continued in possession. Be that as it may.

10. In *Mahavir v. Union of India (2018) 3 SCC 588*, the Supreme Court held as under:

“23. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.”

11. The aforesaid Judgment has been considered by the Supreme Court in

the decision of *Indore Development Authority v. Shailendra* reported at (2018) 3 SCC 412, relevant portion of which is reproduced hereunder:-

“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 W.P.(C) Nos. 946/2017 & 948/2017 Page 5 of 7 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 W.P.(C) Nos. 946/2017 & 948/2017 Page 6 of 7 would be received or entertained by the courts.”

12. Another difficulty for the Petitioners is that the land in question has been acquired for Rohini Residential Scheme. Although they seek to contend that the orders passed by the Supreme Court in SLP (C) No.16385-88/2012 (*Rahul Gupta v. DDA*) do not pertain to Village Mohamadpur Majri, Rohini where the land in question is located, this Court has rejected a similar plea earlier in its order dated 22nd November 2018 in W. P. (C) 5111 of 2016 (*Jawahar Singh v. Lt. Governor*). This Court finds that in the order dated 18th October 2016 in *Rahul Gupta v. DDA*, the Supreme Court was categorical 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 DDA, failing which it shall be assumed to be in possession of the DDA, after the expiry of ten days from the passing of the instant order.”

13. Yet another hurdle comes in the way of the Petitioner, since the admitted position is that the land in question is part of an unauthorised colony. This

Court has consistently been refusing the relief of declaration of deemed lapsing of land acquisition proceedings when the property in question is a part of unauthorised colony. In its order dated 10th January, 2019 in WP (C) No. 3630/2018 (*Akhil Sibal s. GNCTD*) it was observed in this context by this Court as under:

“16. It appears that the Petitioners are pursuing parallel proceedings and seeking different reliefs in respect of the same lands in question – one is to seek regularization by contending that the building on the land in question is part of an unauthorized colony, the other is to invoke Section 24 (2) of the 2013 Act, to seek lapsing of the land acquisition proceedings. In the considered view of the Court, the attempt at invoking Section 24 (2) of the 2013 Act is, in the W.P. (C) Nos. 946/2017 & 948/2017 Page 7 of 7 circumstances, misconceived. Clearly, therefore, the present petitions are an abuse of the process of the Court where the facts speak for themselves. 17. Further, the manner in which the facts have been narrated, a relief under Section 24 (2) of the 2013 Act, is not even capable of being granted in either of the petitions. In similar circumstances, this Court had in its order dated 19th December, 2018 in W.P.(C) No.190/2016 R. Bhagwan Batra v. Government of NCT of Delhi, rejected the prayers of the Petitioners where they were seeking a similar relief in respect of the land in an unauthorized colony i.e. Guru Ram Das Nagar. The Court there has pointed out that the Petitioners should be pursuing their case for regularization. 18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting regularization orders. A large portion of these colonies are by way of encroachment on public land. Some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premise on which such regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those structures. That very basis gets contradicted as some of them

tried to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable.”

14. Following the aforementioned decisions and in the light of the facts and circumstances listed out hereinbefore, the present petition is dismissed both on the ground of laches as well as merits.

SANJEEV NARULA, J.

S.MURALIDHAR, J.

JANUARY 25, 2019

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