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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11666/2016

DAMINI WADHWA

..... Petitioner

Through: Mr MP Bhargava, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Kavindra Gill, Advocate for R-1/UOI
and R-2

Mr Pawan Mathur, standing counsel for
DDA.

Mr Siddharth Panda, Advocate for
LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VINOD GOEL

ORDER

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08.02.2019

1. The prayers in the petition read as under:

“(i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to 1 Bigha (1008 sq. yds), of agricultural land out of 1/4th undivided share in agricultural land measuring 18 Bighas 7 Biswas comprised in Khasra Nos.590 & 591min, situated in revenue Estate of Village Maidan Garhi, New Delhi having lapsed and further quashing the impugned notification No. F.9(16)/80-L&B dated 25.11.1980 issued under section 4, Notification No.F.9(28)/85-L&B dated 18.06.1985 issued under Section 6 of the Land Acquisition Act, 1894 and the Award no.23/87-88 with respect to 1 Bigha (1008 sq. yds) of agricultural land out of 1/4th undivided share in agricultural land measuring 18 Bighas 7 Biswas comprised in Khasra Nos.590 & 591min, situated in revenue Estate of Village Maidan Garhi, New Delhi;

AND

(ii) issue a writ of mandamus and/or any other writ, order and

direction of the similar nature issuing directions to the Respondents not to disturb or hinder the possession and enjoyment of the Petitioner over 1 Bigha (1008 sq. yds) of agricultural land out of 1/4th undivided share in agricultural land measuring 18 Bighas 7 Biswas comprised in Khasra Nos.590 &591 min, situated in revenue Estate of Village Maidan Garhi, New Delhi.

(iii) pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 25th November 1980, followed by declaration under Section 6 of the LAA on 18th June 1985. The impugned Award No. 23/87-88 was passed way back in 1987-1988. Thereafter the petition straightaway refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') and that compensation for the subject lands should be determined, as physical possession has been taken, and paid to the Petitioners. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the counter-affidavit filed by the ADM (South), it is submitted that the Petitioner is not the recorded owner of the land but is a subsequent purchaser having claimed relief on the basis of an Agreement to Sell and General Power of Attorney which were executed subsequent to the notifications issued under the LAA. Hence the Petitioner has no *locus* to file the present petition. It is stated that vacant physical possession of the land in question was taken on 16th July 1987 and was handed over by the LAC to DDA on the spot. It is further stated that the compensation has been paid and that “the lands vests with the Government absolutely under Section 16 of the Land Acquisition Act, 1894 without any

encumbrances.” A table showing details of the compensation paid, is given in para 6 of the counter-affidavit which is reproduced below;

NAME & SHARE	AWARD NO.	AMOUNT	REMARKS
Lakhi Ram S/o Paras Ram 1/8	23/87-88	201735.11	Paid vide ch. No. 81015 dated 28.8.87
Zile Singh S/o Paras Ram 1/8	23/87-88	201735.11	Paid vide ch. No. 81016dated 31.8.87
Hoshiyar Singh S/o Paras Ram 1/8	23/87-88	201735.11	Paid vide ch. No. 81017 dt. 31.8.87
Raghuvir Singh S/o Paras Ram 1/8	23/87-88	201735.11	Paid vide ch. No. 81018
Bhagwan S/o Goverdhan 1/2	23/87-88	806940.44	Paid on 22.04.2003 as per Corrigendum

4. The counter-affidavit filed by the DDA supports the stand of the ADM . It is pointed out that the alleged Agreement to Sell dated 14th November 2005 does not even identify the land allegedly purchased by the Petitioner. It is submitted that the petition is barred by delay and laches. It is further stated that as per the land records, the land bearing Khasra No. 590 (16-17), 591 min(1-10) was acquired by Award No.23/87-88. It is stated that physical possession of the land was handed over to the DDA on 16th July 1987. It is further submitted that there can be no sale

of any land covered which is covered by notifications under Section 4 and 6 of LAA.

5. No rejoinder has been filed to any of the counter-affidavits filed by the ADM and DDA. It is quite evident from the details of payment in the counter-affidavit of the ADM that compensation has been paid to the recorded owners of the subject land. In any event, the assertion by the Petitioners that they continue to remain in possession of the land in question and have not been paid compensation gives rise to disputed questions of fact which cannot be examined in the present proceedings. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

6. On the aspect of laches, in *Mahavir v. Union of India (2018) 3 SCC 588* the Supreme Court has observed 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.”

7. The above decision has been re-affirmed by the judgment of the three Judge Bench decision of the Supreme Court in *Indore Development Authority v. Shailendra (2018) 3 SCC 412* where it was 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.”

8. The above observations have been followed by this Court in several orders including the order dated 10th January, 2019 in WP(C) No. 4528/2015 (*Mool Chand v. Union of India*) and similar petitions have been dismissed on the ground of laches.

9. For the aforementioned reasons, the writ petition is dismissed both on the ground of laches as well as on merits, but in the circumstances, with no orders as to costs. The interim order dated 14th December 2016 as confirmed on 23rd March 2018 is hereby vacated.

S. MURALIDHAR, J.

VINOD GOEL, J.

FEBRUARY 08, 2019