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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7551/2017

PHOOL KANWAR

.... Petitioner

Through: Mr. L.P. Rai, Advocate.

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Sanjay Kumar Pathak,
Advocate for LAC.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

01.08.2019

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

“a. pass a writ order or direction for issuance of a writ of declaration declaring the acquisition proceedings initiated in respect of the land of the petitioner measuring 1 Bigha situated in Kh. No. 25/13/1 village Palam, Tehsil Najafgarh, South East District, New Delhi, as deemed to have lapsed in view of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

b. pass a writ order or direction in the nature of mandamus thereby directing the respondents not to interfere in the peaceful possession and enjoyment of the petitioner in respect of his property measuring 1 Bigha bearing Kh. No. 25/13/1 village Palam, Tehsil Najafgarh, South East, New Delhi.”

2. The background facts are that the land in question i.e. 1 *Bigha* comprised in Khasra No. 25/13/1 in Village Palam, Tehsil Najafgarh, South East

District, New Delhi (hereafter, 'subject land') was notified under Section 4 of the Land Acquisition Act, 1894 ('LAA') on 27th January, 1984 for the public purpose of "planned development of Delhi". This was followed by a declaration under Section 6 dated 26th September, 1984. The Land Acquisition Collector ('LAC') passed an award being Award No. 157/86-87 on 28th April, 1986.

3. As far as the Petitioner is concerned, it is stated in the petition that she purchased the subject land from the former owner, one Shri Satish Kumar by way of a registered General Power of Attorney dated 19th May, 2016, a Will dated 24th May, 2016 and an "Agreement to Sell, Special Power of Attorney, Indemnity bond, Affidavit, Receipt and Possession Letter" all dated 26th May, 2016. It is averred that Shri Satish Kumar in turn purchased the subject land from one Shri Sanjay Kumar by way of a General Power of Attorney ('GPA') dated 23rd February, 2010. It is stated that Shri Sanjay Kumar purchased the subject land from one Shri Kanhaiya Lal by way of GPA dated 28th October, 1994 and that he in turn purchased the subject land from the recorded owner Shri Ram.

4. The entire chain of the aforesaid documents has been annexed with the petition. They are unregistered documents executed long after the Award in question. Apart from the said documents not being valid instruments for transfer of title, it appears that despite the Petitioner having full knowledge of the status of the land in question, she failed to take permission from the competent authority, in terms of the Delhi Land (Restriction of Transfer)

Act, 1972 and proceeded with the transaction. Her locus standi to maintain this petition is, therefore, extremely doubtful.

5. It is averred in the petition that the possession of all the land, except that of the Petitioner, was taken on 13th October, 1986. It is averred that the Petitioner continues to be in possession of the subject land and that the Petitioner's 'green house' is situated on it. A copy of the possession proceedings has been annexed with the petition. It is further averred that compensation in respect of the subject land has not been paid or tendered to the Petitioner. Thereafter, the Petitioner 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.

6. A counter affidavit has been filed on behalf of the LAC, where it is averred that at the time that the LAA Section 4 notification was issued, the Petitioner was not the owner of the subject land. It is further averred that the Petitioner is claiming ownership through a GPA, which cannot be said to be conferring valid title. The judgment of the Supreme Court in ***Suraj Lamp Industries Pvt. Ltd. v. State of Haryana (2009) 7 SCC 363*** has been referred to. It is also averred that possession of Khasra No. 25/13/1 (5-19) was taken on 13th October, 1986. As regards compensation, it is averred that compensation has been deposited in a Revenue Deposit by RD No. 76444 dated 4th March, 1987.

7. A rejoinder has been filed on behalf of the Petitioner, where the averments in the counter affidavit of the LAC have been denied and the contents of the writ petition reiterated.

8. The Petitioner's assertion that possession of the subject land has not been taken and compensation not paid, gives rise to disputed questions of fact and cannot be examined in the present petition. The fact further remains that there is no explanation for the inordinate delay in the Petitioner approaching the Court for relief.

9. 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.”

10. 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).

11. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 9th January, 2018 as confirmed on 12th April, 2018 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 1, 2019

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