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

+ **W.P.(C) 710/2017**

MITALI WADHWA

..... Petitioners

Through: Ms. Jyoti Kataria Bajaj,
Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Sachin Nawani, Advocate
for Respondent/DDA.
Mr. Sidhant Panda, Advocate
for L&B/LAC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

10.07.2019

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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 2 Bighas 15 Biswas of agricultural land comprised in Khasra No.636, situated in the revenue Estate of Village Maidan Garhi, Tehsil Hauz Khas (Mehrauli), 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 2 Bighas 15 Biswas of agricultural land comprised in Khasra No.636, situated in the revenue Estate of Village Maidan Garhi, Tehsil Hauz Khas (Mehrauli), 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 2 Bighas 15 Biswas of

agricultural land comprised in Khasra No.636, situated in revenue Estate of Village Maidan Garhi, Tehsil Hauz Khas (Mehrauli), New Delhi.”

2. The narration in the petition reveals that a notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) for the acquisition of the land in question 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 in 1987-88.

3. It is further stated in the petition that the Petitioner is the owner in possession of 2 Bighas 15 Biswas of agricultural land comprised in Khasra No.636 of village Maidan Garhi (Mehrauli), New Delhi (hereafter ‘subject land’). It is submitted that 1 Bigha 13 Biswas was purchased by the Petitioner from various residents of village Maidan Garhi by Agreements to Sell, GPAs, Wills, Receipts, etc. dated 8th April, 2006, which have been annexed along with the petition. It is submitted that a further 11 Biswas of land was purchased from other residents of village Maidan Garhi by the abovementioned documents dated 15th May, 2006, which have also been annexed along with the petition. It is submitted that the final 11 Biswas of the subject land was further purchased from residents of village Maidan Garhi by the abovementioned documents dated 19th June, 2006, which have also been annexed along with the petition. It is stated that the Petitioner has never been deprived of the land and continues to remain in physical possession thereof. A copy of the *Khatauni* for the year 1990-91 has been annexed along with the petition.

4. A perusal of the said documents reveals that they are unregistered

and do not confer any valid right, title or interest in respect of the lands in question in favour of the Petitioner. In this case, the Notification under Section 4 of LAA was issued on 25th November 1980 and the Award was passed on 17th June 1987. The Petitioner having full knowledge about the status of the land in question and without taking permission from the competent authority as required under Delhi Land (Restriction of Transfer) Act, 1972 has entered into the above transactions in respect of the lands in question beginning in 2006, which was way after the passing of the impugned Award. The validity of the above documents is, therefore, extremely doubtful. In the circumstances, the Court is not satisfied that the Petitioner has been able to even *prima facie* demonstrate its locus standi to file this petition and claim any relief under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act').

5. It is then stated in the petition that Petitioner or her predecessor in interest have not been paid any compensation whatsoever, and further, that the LAC has not paid any compensation under Section 31(1) LAA or deposited the same in the Court under Section 31(2) LAA. There is a reference in the petition to the fact that one aspect of the challenge to the land acquisition concerning the limitation for issuing a declaration under Section 6 LAA was decided against the land owners by a Full Bench of this Court in ***Balak Ram Gupta v. Union of India AIR 1989 Del 239*** and the other aspect concerning Section 5-A of the LAA which was decided by a Division Bench of this Court in ***Balak Ram Gupta v. Union of India (1989) 37 DLT 150*** (hereafter ***Balak Ram DB***), in favour of the land owners.

However, the present petition is silent on whether the predecessor-in-interest of the present Petitioner had also joined in the said challenge.

6. This is important because if the Petitioner's predecessor-in-interest did not in fact join those Petitioners in the challenge, then the benefit of those judgments would not enure to the present Petitioner. This has been clarified by the Supreme Court of India in ***Delhi Administration v. Gurdip Singh Uban* (1999) 7 SCC 44**, following an earlier judgment of a three-Judge Bench in ***Abhey Ram v. Union of India* (1997) 5 SCC 421**. The said three-Judge Bench had effectively overruled the view of a two-Judge Bench in ***Delhi Development Authority v. Sudan Singh* (1997) 5 SCC 430** which had held that the decision in ***Balak Ram DB*** was a judgment in rem and that the entire land acquisition proceedings stood quashed. In ***Delhi Administration v. Gurdip Singh Uban* (supra)**, it was clarified that the decision in ***Balak Ram DB*** would apply only to those land owners who had in fact filed the petitions in which the said order was passed. The Supreme Court re-affirmed its judgment in ***Delhi Administration v. Gurdip Singh Uban* (supra)** by another separate order on 18th August 2000 reported as ***Delhi Administration v. Gurdip Singh Uban 2000 Supp (2) SCR 496***.

7. A reference is also made to the fact that one of the verdicts of the DB of this Court was upheld by the Supreme Court in ***Union of India v. Shiv Raj* (2014) 6 SCC 564**. However, the petition is again silent on the Petitioner's predecessor-in-interest being a party to those proceedings. The resultant position is that barring the petitioners who

were actually parties to the writ petitions in which the decision in ***Balak Ram DB*** was rendered, the land acquisition proceedings would stand valid as far as those who did not challenge it. Thus, as far as the present petition is concerned, it would fall in the latter category. Therefore, clearly the predecessor-in-interest of the Petitioner accepted the validity of the land acquisition proceedings and never challenged it.

8. The petition thereafter straightaway refers to Section 24 (2) of the 2013 Act and claims that since neither possession of the land in question has been taken nor compensation paid the Petitioner is entitled to a declaration of deemed lapsing of land acquisition proceedings thereunder.

9. In the counter affidavit filed on behalf of the LAC, it is submitted that subsequent to the notice and declaration under Sections 4 and 6 LAA respectively, the impugned Award No.23/87-88 was passed on 17th June 1987 for the purpose of the ‘Planned Development of Delhi’ after considering the claims of all the concerned claimants and interested persons. It is stated that such interested persons had challenged the impugned acquisition proceedings by filing various writ petitions where interim protection was granted by this Court in W.P(C) 424 of 1987 ***Chatro Devi v. Union of India & Ors.*** and other connected matters which continued till the disposal of the petitions where the acquisition proceedings were upheld and the petitions dismissed on 25th November 2004. It is mentioned that in one set of writ petitions, there was a difference of opinion, and the same was decided on 11th May 2007 in favour of the landowners whereby the

subsequent acquisition proceedings were quashed. However, the aggrieved parties i.e. the land owners and the Union of India went in appeal before the Supreme Court where the appeal of the land owners was dismissed by the Supreme Court in ***Om Prakash v. Union of India & Ors. 2010 (4) SCC 17*** along with other appeals by upholding the acquisition proceedings. It is submitted that the appeals filed by the Union of India were dismissed on 7th May 2014 in ***Shiv Raj (supra)***.

10. It is stated that the documents relied on by the Petitioner to claim ownership confer no valid right or title to the subject land and the petition ought to be dismissed as the Petitioner has no *locus standi* to file the same. It is also stated that the impugned acquisition proceedings have attained finality and the subject land vests with the Government free from all encumbrances. On the aspect of possession and compensation, it is submitted in Para 8 of the affidavit that:

“8. That in the present case, the possession of the land of the petitioner was taken over and handed over to the beneficiary department on 16.07.1987 and compensation with respect to the subject land has been paid to the following persons:-

NAME & Share	AWARD NO.	AMOUNT	REMARKS
Mahaveer Singh	23/87-88	21983.69	Paid vide ch. No.81062 dt. 09.09.87 for Rs.521221.52 along with Item no.416
Gain Singh S/o Mohan Lal		43967.39	Paid vide ch. No.81085 dt. 10.09.87 for Rs.1062443.06 along with Item No.409
Attar Singh S/o Bhoop Singh		10991.84	Paid vide ch. No.81086 dt.

			10.09.87 for Rs.265610.76 along with item No.412
Sukhbir Singh S/o Hosyar Singh		21983.70	Paid vide cheque No.81087 dt. 10.09.87 for Rs.631221.54 along with item No.415
Ram Singh S/o Mohan Lal		43967.39	Paid vide ch. No.82556 dt. 15.09.87 for Rs.1062443.06
Bhagwat Singh S/o Mohan Lal		43967.39	Paid vide ch. No.82502 dt.11.09.87 along with item No.410
Sarup Singh S/o Bhoop Singh		10991.85	
Anand Singh S/o Bhoop Singh		10991.85	Paid vide ch. No.82503 dt. 11.09.87 for Rs.265610.77 along with item No.413
Satish Kumar Bhoop Singh		10991.85	Paid vide ch. No.82504 dt. 11.09.87for Rs.1062443.06 alongwith item No.414

11. No rejoinder has been filed by the Petitioner to the abovementioned counter affidavit. In any event, the assertion by the Petitioner that she continues to remain in physical possession of the land in question or that compensation has not been tendered gives rise to disputed questions of fact which cannot possibly be examined in the present petition. As already noted, the *locus standi* of the Petitioner to claim relief under Section 24 (2) of the 2013 Act is extremely doubtful.

12. The fact further remains that the Petitioner has no explanation to

offer for the inordinate delay in approaching the Court for the relief with respect to an Award that was passed way back in 1987. 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.”

13. The above decision has been reaffirmed by the judgment of a three Judge Bench 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/negatived, neither do they revive those rights which have become 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.”

14. 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 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 on certain other issues but 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 *Mool Chand v. Union of India 2019 (173) DRJ 595 DB*.

15. 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.

16. The interim order dated 27th January 2017 which stood confirmed on 4th December 2017 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 10, 2019/abc