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

+ **W.P.(C) 7476/2015, CM APPLs.13802/2015 & 1801/2017**

SUKHBIR SINGH & ANR.

..... Petitioners

Through: Mr.Ankit Sharma with Mr.Rajal
Mathur, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.G.Tushar Rao, Advocate for UOI.
Ms.Mrinalini Sen, Standing Counsel
for DDA.
Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Advocate for
LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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06.02.2019

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

“a) Issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition alongwith Award No. 22/2005-06/DC(NW) announced on 02.01.2006 with respect to the land of the Petitioners bearing Khasra Nos. 55/27 min (1-16) total measuring 1 Bighas 16 Biswas situated in the revenue estate of Village Karala, Delhi-110081; having been lapsed; and

b) Pass any other order or writ or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 (LAA) was issued on 21st March 2003 followed by declaration under Section 6 LAA on 19th March 2004. The impugned Award No.22/2005-06/DC/N-W was announced on 2nd January 2006. There is no explanation in the entire petition for the inordinate delay in the Petitioners approaching the Court for relief.

3. In the petition, it is stated that the Petitioners continue to remain in actual physical cultivatory possession of the land till the filing of the petition and that they did not allow the Respondents, under protest to take actual physical possession. It is claimed that one of the affected persons of the same village filed an application under the RTI Act, in reply to which on 5th January 2015 the Land and Building Department of District (NW) admitted that none of the awardees/owners has received compensation. The petition then straightaway proceeds to refer to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which came into force on 1st January 2014.

4. In the short affidavit filed by the Union of India on 1st December 2015, it was pointed out that the land in question was acquired for the public purpose of the Rohini Residential Scheme. In a separate affidavit filed by the LAC on 5th February 2016 it is stated in paras 4 to 6 as under:

“4. That the present writ petition is liable to be dismissed as the actual vacant physical possession of the subject lands falling in khasra number 55/27 (1-16) which became the subject matter of the present writ duly taken way back on 25.7.2006 on the spot by preparing possession proceedings on the spot and the same was handed over to the DDA on the spot and the petitioners did

not challenge the same at the relevant time hence the present petition is highly barred by limitation. The compensation to the tune of Rs. 481866/- each was also duly paid to the petitioners vide cheque numbers 920620-21 dated 12.9.2006 as the petitioners duly moved an application seeking release of compensation. It is submitted that having accepted the compensation, the petitioners have given up their challenge to the acquisition proceedings and the present writ petition deserves no merits. It is submitted that having accepted the compensation, the petitioners cannot be permitted to take 'U' turn by filing a present writ petition. A copy of the application moved by the petitioners seeking release of compensation is annexed herewith as Annexure R -1.

5. That the present writ petition is further liable to be dismissed as none of the petitioners appeared to have ever challenged the acquisition proceedings under reference.

6. That the present writ petition is further liable to be dismissed on the ground of delay and laches as the acquisition proceedings became complete after taking of the physical possession.”

5. Enclosed with the counter-affidavit is a copy of the applications dated 11th September 2006 submitted by the Petitioners at the time of receipt of compensation. It is stated *inter alia* therein that the Applicant ‘shall receive compensation under protest and subject to the filing of the reference under Section 18’ of the LAA.

6. In the rejoinder filed to the affidavit of the LAC, the Petitioners have enclosed photographs with the timestamp of 6th March 2016 claiming that the physical possession of the land still remains with them. It is further stated that:

“the petitioners have accepted the compensation to the tune of Rs.4,81,866/- each vide cheque numbers 920620-21 dated 12.09.2006, but the same was received under protest by the Petitioners.”

7. On behalf of the DDA, a separate affidavit has been filed on 9th May 2016 confirming that actual physical possession of the land in question was taken over by the LAC and handed over to the DDA on 25th July 2006 and 18th July 2007 and further transferred to the Rohini Residential Scheme. Copy of the possession proceedings has been enclosed with the affidavit. It must be pointed out that no rejoinder as such has been filed to the said affidavit of the DDA.

8. While issuing notice in the present petition on 18th August 2015, this Court directed the parties to maintain status quo. This interim order was continued even thereafter. Meanwhile, in view of the orders passed by the Supreme Court on 10th March 2015, 28th January 2016 and 18th October 2016 in the Interlocutory Applications in SLP (C) 13685-88 of 2012 (***Rahul Gupta v. DDA***), the DDA on 6th January 2017 filed an application being CM 1801 of 2017 for vacation of the interim order dated 18th August 2015.

9. In the reply filed to the above application, it was contended that the orders passed by the Supreme Court in ***Rahul Gupta v. DDA*** (*supra*) only pertain to Sectors 34, 35, 36 and 37 Rohini which fall in the Revenue Estate of Village Bharwala and, therefore, did not apply to the land in question which was in Revenue Estate of Village Karala. This Court on 30th May 2017 vacated the interim order in view of the orders of the Supreme Court.

10. In the first place the petition is barred by delay and laches as there is no reasonable explanation offered by the Petitioner for the inordinate delay in approaching the Court for relief. In *Indore Development Authority v. Shailendra* (2018) 3 SCC 412, the Supreme Court 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.”

11. The second difficulty in the Petitioners being granted relief under Section 24(2) of the 2013 Act is that in view of the orders passed by the Supreme Court in ***Rahul Gupta v. DDA*** (*supra*), possession of the lands in question is deemed to be with the DDA. In this context, a reference may be made to the order passed by the Supreme Court in the aforementioned case on 18th October 2016 where it was clarified that the earlier interim orders would apply to ‘all matters pertaining to the land acquisition relating to the Rohini Residential Scheme, pending before the High Court.’ The Supreme Court made it clear 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 Delhi Development Authority, failing which it shall be assumed to be in possession of the Delhi Development Authority, after the expiry of ten days from the passing of the instant order.”

12. Therefore, in the present case it is futile for the Petitioners to contend that they continue to remain in possession of the lands in question. The Petitioners have already admitted to having received compensation in the matter and, therefore, do not fulfil the essential conditions for grant of relief under Section 24(2) of the 2013 Act.

13. Learned counsel for the Petitioners sought to place reliance on the decision of the Supreme Court in *Velaxan Kumar v. Union of India (2015) 4 SCC 325* regarding the deemed lapsing of land acquisition proceedings under Section 24(2) of the 2013 Act. The said order is clearly distinguishable on facts particularly since in the present case, the question of the Petitioners remaining in possession of the land is decided against them by the orders passed by the Supreme Court in *Rahul Gupta v. DDA (supra)*.

14. For the aforementioned reasons, the petition is dismissed both on the ground of delay and laches as well as on merits. The applications are disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 06, 2019

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