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

+ **W.P.(C) 9657/2017**

OM PRAKASH & ORS. .... Petitioners

Through: Mr. RK Sharma, Advocate

versus

GOVT. OF NCT OF DELHI&ANR. .... Respondents

Through: Ms. Nidhi Raman, Advocate for R-1.  
Mr. Sanjay Kumar Pathak, Mr. Sunil  
Kumar Jha and Mr. MS Akhtar,  
Advocates for L&B/LAC

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

% **23.07.2019**

1. The prayers in the petition read as under:

“1.Issue a writ, order or direction in the nature of certiorari or any other appropriate writ/order directing the respondents to quash/cancel the award no.1606 dated 22/07/1963 in respect of Khasra no.359, in the revenue estate of Village Khampur Raya, Patel Nagar, Delhi area ad-measuring 17 Biswa, with immediate effect, in the interest of equity and justice, in view of provisions of section 24(2) of right to fair compensation and transparency in land acquisition/rehabilitation and resettlement act 2013.

2.Costs of the petition may also be allowed in favor of the petitioners.”

2. The narration in the petition reveals that notification under Section 4 of the

Land Acquisition Act, 1894 ('LAA') for acquisition of the land in question was issued on 13<sup>th</sup> November 1959, followed by a declaration under Section 6 of the LAA on 17<sup>th</sup> February 1962. The impugned Award No. 1606 was passed on 22<sup>nd</sup> July 1963. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. It is stated in the petition that Petitioner No.1 is the grandson of late Shri Data Ram and Petitioner No.2 is the son of late Shri Nihal Singh, who were both the *bhumidars* of land in Khasra No.359 within the revenue estate of Village Khampur Raya, Patel Nagar, Delhi admeasuring 17 Biswa (hereafter 'subject land'), along with other co-*bhumidars*. It is stated that at the time of passing of the impugned Award No.1606 i.e. 22<sup>nd</sup> July 1963, Khasra No.359 was a 'built up area' and physical possession of the same was not taken over during the *Kabza Karyavahi* in pursuance of the said Award. It is claimed that the Petitioners are in continuous possession of the subject land.

4. The Petitioners state that the Municipal Corporation of Delhi (MCD) had tried to disturb the possession of the Petitioners but could not succeed. It is further stated that subsequent thereto, the Petitioners filed Civil Suit No.1949/1999 against the MCD. However, the said suit was abandoned as the Petitioners "did not get restraint order against the MCD in the year 1999." It is submitted that electric connections have been installed in the subject land; the Petitioners have been paying House Tax since 1961 and also that water connections have been installed.

5. It is further submitted that the Petitioners applied for de-notification of the subject land, to which they received a reply dated 8<sup>th</sup> March 2000 from the SDM, Patel Nagar, admitting that physical possession of the said land could not be taken over due to 'built up area'. A copy of the reply by the SDM has been enclosed with the petition.

6. The Petitioners also challenged the acquisition proceedings in this Court in W.P(C) 752/1963 which was dismissed on 23<sup>rd</sup> October 1970. It is also stated that though the impugned Award was passed with respect to land comprised in Khasra No.359, area admeasuring 17 Biswa, it being a built-up area is shown as 'Gair Mumkin Abadi' in the *Jamabandi* for the period 2004-05. It is the Petitioners' case that since they are in continuous possession of the land and have not been paid compensation, the acquisition proceedings in respect of the subject land stand lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act').

7. In the counter affidavit filed on behalf of the LAC, it is stated that the present petition ought to be dismissed on the ground of delay and laches, and because it raises disputed questions of fact which cannot be adjudicated upon in the present petition. It is stated that it is also liable to be dismissed as subsequent to the passing of the impugned Award No.1606 for public purpose, possession of the subject land was taken over on 7<sup>th</sup> August 1963 and compensation amount was paid to the recorded owners/interested persons. It is

stated that as per LAC record, “recorded owners of the subject land are Ghisa s/o Jhangi, Nihal s/o Jhangram, Data Ram s/o Kure  $\frac{3}{4}$  share, Siri Ram, Sita Ram, Kalu Ram, Hari Ram s/o Tilak Ram and Pratap Singh s/o Tara Chand  $\frac{1}{4}$  share at shumar No.57 to 64.” As for the compensation amounts, details of the same have been laid out in tabular form in para 8 of the counter affidavit. It is submitted that once the possession of the land has been taken over and the acquisition proceedings have attained finality, the provisions of Section 24(2) of the 2013 Act cannot come to the aid of the Petitioners.

8. A rejoinder to the above counter affidavit has been filed by the Petitioners. It denies the averments made by the LAC in its counter affidavit regarding possession of the subject land and the compensation paid for the same. It is stated that the Petitioners have not concealed relevant facts from the Court. It is stated that the Respondents have “not filed any document of possession proceeding report dated 07/08/1963 of the subject land as there is none whereas petitioner filed a report dated 27/02/1973 (wrongly mentioned as 22/07/1973 in petition at some places due to inadvertence) of the Naib Tehsildar/Patwari/Kanungo whereby it was mentioned that possession of the land cannot be taken up as it is built up area.” The averments made in the petition have been reiterated.

9. The assertions made by the Petitioners that they continue to remain in possession of the land in question and also as regards the status of

compensation give rise to disputed questions of fact, which cannot be examined in the present petition. The fact further remains that the Petitioners attempted and failed in their challenge to the acquisition proceedings twice. Once in 1970 when their writ petition was dismissed and then again in 1999 when they abandoned their suit filed against the MCD. Their attempt at getting the subject land denotified under the LAA also failed. For more than 17 years since then they have kept quiet. They have no explanation to offer for the inordinate delay in approaching the Court for the relief for the third time in respect of an Award that was passed way back in 1963 and the petition is grossly barred by laches.

10. 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.”

11. The above decision has been reaffirmed in the judgment of the 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 land owners/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 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.”

12. 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 (2014) 3 SCC 183* 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 [595] DB*.

13. 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.

**S.MURALIDHAR, J.**

**TALWANT SINGH, J.**

**JULY 23, 2019**

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