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

+ **W.P.(C) 9144/2017**

JAMIL KHAN & ORS.

..... Petitioners

Through: Mr. Raj Bahadur Singh, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Anju Gupta, Mr. Siddharth Bansal for UOI.

Mr. Arjun Pant for DDA.

Mr. Yeeshu Jain, Standing Counsel and Ms. Jyoti Tyagi for L&B/LAC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE PRATEEK JALAN

ORDER

08.05.2019

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1. The prayers in the petition read as under:

“a. Pass a writ, order or direction in the nature of writ of declaration, thereby declaring the acquisition proceedings initiated in respect of the land of the petitioners with respect to their land i.e. being 1/6 joint share in Khasra No. 892/1(02-08) and being 1 /2 joint share in Khasra No. 1071 (04-16), situated in the revenue estate of Village- Satbari, Tehsil-Saket, New Delhi, to the extent of their respective share, as deemed to have lapsed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

b. Further pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondents not to interfere with the peaceful possession and enjoyment of the land of the petitioners i.e. being 1/6 joint share in Khasra No. 892/1 (02-08) and being 1 /2 joint share in Khasra No. 1071 (04-16), situated in the revenue estate of Village- Satbari, Tehsil-Saket, New Delhi, to the extent of their respective

share.”

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 27th May 1985. The impugned Award No. 14/1987-88 was passed on 26th May 1987. 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 the Petitioners are all farmers and seek quashing of the acquisition proceedings with respect to their share being 1/6th in Khasra No. 892/1(02-08) and 1/2 share in Khasra No. 1071(04-16) situated in revenue estate of Village- Satbari, Tehsil-Saket, New Delhi. It is stated that the subject land has not been acquired by the Respondents and the Petitioners are still in possession of the same and no compensation has been paid to the Petitioners or their Predecessors-in-interest.

4. It is stated that the Petitioners filed W.P.(C) 6553/2014 in this court which was dismissed vide judgment dated 15th April 2014 granting relief of lapsing to the Petitioners with respect to the petitioners in the land comprised in Khasra Nos. 1052 (2- 0), 1056 (4-16), 1057 (4-16), 1058 (1-19), 1061/2 min (3-11), 1064 (4-16) and 1065 (3-0) measuring 24 Bighas 18 biswas and in Khasra Nos. 1053(3-19), 1054 (3-12) and 1055 (3-12) measuring 11 bighas 3 biswas and 6 bighas out of khasra no. 1100 in village Satbari, New Delhi. Subsequently, W.P. (C) 4520/2015 was filed by the Petitioners for declaration of the acquisition proceedings initiated in respect of the land comprised in Khasra No.

917/1 min(1-04), 918(2-06) & 922 (0-17) total measuring 4 bighas 7 biswas and 1/6th share in Khasra no. 892/1 (2-08), 917/2 (03- 11), 1052 min (2-00), 1056 (4-16), 1057(4-16), 1058(1-19), 1061/2 min (3-11), 1064(4-16) & 1065(3-00), total measuring 27 bighas 6 biswas. The Petition was dismissed vide order dated 28th August 2017 with liberty to the Petitioner to approach the court with the correct factual position.

5. In the counter-affidavit filed on behalf of the LAC, it is submitted that the the Petitioners have not filed on record any documents to show that they or their predecessor-in-interest have any title or interest over the subject land. It is stated that the physical possession of land in Khasra No. 892/1 (02-08) and 1071 (04-16) was taken on 14th July 1987 and handed over to the DDA on spot. On the aspect of compensation it is stated that:

“compensation was also paid as in khasra 1071, Ms. Indu Mittal 1/4th share, Rama Jain 1/4th share, Saneh Kumar Mittal 1/4th share and Dinesh Kumar 1/4th share were have shares and they were paid compensation vide cheque number 996227 dated 19.10.87, 996228 dated 19.10.87, 996274 dated 26.10.87 and 996275 dated 26.10.87 respectively. It is submitted that the khasra number 1071 is also a subject matter of litigation in CWP No. 714/2015. Compensation amounting to Rs.29097.76 each in respect of Kallu 1/3rd share, Suleman 1/3rd share and Navivaksh 1/3rd share pertaining to Khasra No. 892/1 [2-8] has been sent in Revenue Deposit.”

6. In the counter-affidavit filed by the DDA, it is submitted that the petition is barred by delay and laches. It is further submitted that as per the land records, the physical possession of the subject land was taken over and handed over to the DDA on 14th July 1987.on the aspect of

compensation it is stated that Rs. 100 Crores were remitted by the Central Government to the LAC as compensation for the said award.

7. In the rejoinder filed by the Petitioners to the counter affidavit of the LAC it is stated that petitioner is the title holders/ bhumidhars of the land in question to the extent of his respective share and the name of the petitioner or his predecessor in interest is clearly mentioned in the revenue records. It is further submitted in Para 8 that “it is pertinent to mention here that the respondents had paid the compensation amount to the other persons/above named persons, namely Smt. Indu Mittal, Smt. Rama Jain, Sh. Sanesh Kumar Mittal & Sh. Dinesh Kumar, with respect to the Khasra No. 1071, who have no concerned to the subject matter of land and the other persons/above named persons have returned/refund the payment received from the LAC with respect to the aforesaid Khasra No. 1071, by issuing the cheques in the name of the Land Acquisition Collector, Delhi (M.W), vide cheques bearing No. 654682, 037505, 635980, 628682 all dated 13.07.1989, drawn on SBI Bank. Hence, the respondents have not paid the compensation amount to the petitioner or his predecessor in interest till date, with respect to the aforesaid Khasra.” It is further stated in the rejoinder that no compensation has been paid to the Petitioners and that the Petitioners are the recorded owners/bhumidars of the subject land.

8. The assertion by the Petitioners that they continue to remain in possession of the land in question and are entitled to compensation which has not been tendered and the denial thereof by the LAC gives rise to disputed questions of fact which cannot be examined in this

petition. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

9. 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.”

10. The above decision has been re-affirmed 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.”

11. 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 (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*.

12. 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 3rd January 2018 which stood confirmed on 19th March 2018 stands vacated.

S. MURALIDHAR, J.

PRATEEK JALAN, J.

MAY 08, 2019/tr