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

Date of decision: 6th September, 2019

+ W.P.(C) 12916/2018

SHARMILA SETH

..... Petitioner

Through: Mr. Rohit Bhardwaj, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. A.P. Sahay, CGSC with
Ms. Indira Goswami, Advocate
for UOI.

Mr. Biraja Mahapatra and
Mr. Sumit Mishra, Advocates
for R-2 & R-3.

Mr. Saroj Bidawah, Standing
Counsel for R-5.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J.:

1. The petitioner has filed the present writ petition seeking a declaration under Section 24(2) of The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013(hereinafter “the 2013 Act”) that the land acquisition proceedings in respect of Plot No. A-35, Krishna Nagar Extension, admeasuring 272.20 sq.yards comprised in Khasra No. 465/3/2 situated in Village Ghondli, Delhi (hereinafter the “subject

property”) acquired vide Award No.3/83-84, be deemed to have lapsed since the Award was made more than five years prior to the commencement of this Act and the compensation has not been paid.

2. The reliefs sought in the petition read as under:

"A. Issue a writ/order/direction in the nature of certiorari calling for the records of the acquisition proceedings Inrespect of Plot No. A-35, Krishna Nagar Extension, Delhi comprised in Khasra No. 465/3/2 situated in Village Ghondli, Delhi which was acquired vide AwardNo.3/1983-84 dated 09.07.1983; and

B. Issue appropriate writ, order or direction declaring that the acquisition proceedings with respect to Plot No. A-35,Krishna Nagar Extension, Delhi, Khasra No. 465/3/2, Village Ghondli acquired through Award bearing No.3/1983-84 dated 09.07.1983, shall be deemed to have lapsed In view of Section 24(2) of The Right To FairCompensation And Transparency In Land Acquisition,Rehabilitation And Resettlement Act, 2013 and Award costs; and

C. Pass such other Order or Order(s) as this Hon'ble Courtmay deem fit in the interests of Justice and in thecircumstances of the case."

3. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter 'the LAA'), was issued on 4th November 1976. The declaration under Section 6 of the LAA was issued on 10th October 1979. Subsequently, an Award dated 9th July 1983, bearing no. 3/1983-84 was passed in respect of land situated at Khasra No. 465/3/2 situated in Village Ghondli, Delhi.

4. The case set out in petition is that the Petitioner's mother Late Ms. Pushpa Chhibbar was the owner of the subject property. She died interstate on 18th March 1994, and the subject property devolved equally on the Petitioner, her father, her two sisters and her brother, and she is one of the co-owner. She or her predecessors-in-interest, were never made part of the Acquisition proceedings despite them being 'interested persons'. It is also the case of the petitioner that in the year 1987, the Respondent No.4 trespassed over the subject property of the petitioner by placing certain construction material for the purpose of building a road. A suit bearing No. 419 of 1987 was filed by Smt. Pushpa Chhibbar, against Respondent No.4 seeking an Injunction to restrain them from constructing the road and dispossessing her from the said Property. However, during the pendency of the suit, Respondent No. 4 constructed the road rendering the suit infructuous. Consequently, the said suit was withdrawn by Petitioner's mother and a fresh suit bearing No. 647/99 of 1989, was filed seeking *inter alia* mandatory injunction, directing Respondent No.4 to remove the illegally constructed road and related material from Petitioner's property. The trial court vide its judgment dated 15th September 2011 decreed the suit in favour of the plaintiffs therein. Respondent No.4 filed an appeal against the said judgment, bearing No. RCA DJ No. 74/2016 titled "MCD vs K.N Chhibbar and Ors". In the said proceedings, petitioner for the first time came to know of the Acquisition proceedings in respect of the subject property, when the said fact was revealed by Respondent No.4.

5. From the above noted facts it emerges that although the Petitioner and her predecessors-in-interest had challenged the construction of road on the subject property, they never initiated any proceedings challenging the land acquisition. Now after the passing of the 2013 Act, a prayer for declaration of lapsing of the land acquisition proceedings is made on the ground that the compensation has not been paid. Whether petitioner's predecessor-in-interest falls in the category of "interested person" or not; and whether she was made a party to the acquisition proceedings or a notice was issued to her; and such other alike questions are not subject matter of the present proceedings, which is premised on the plea of deemed lapsing under the 2013 Act. Likewise, disputes and questions relating to deposit of compensation in the account of the land owner for the subject property are factual and cannot be decided in writ jurisdiction of this Court. Here, we are concerned with petitioner's right to seek the reliefs enumerated above. On this aspect, significantly, there is no explanation whatsoever offered in the petition for the inordinate delay in coming forward to seek relief under Section 24 (2) of the 2013 Act. The Award for the said property was passed in 1983, whereas the present petition has been filed after more than three decades. The petition is obviously barred by laches. Petitioner's bald averment of gaining knowledge of the proceedings pursuant to disclosure by Respondent No.4 in the year 2012, can't be countenanced. The delay in approaching the court can be condoned or accepted only if sufficient reasons are assigned. It cannot be done on the vague, frivolous and flimsy grounds. The inaction on the part of the Petitioner cannot ignored on a plea of no

knowledge of the acquisition proceedings which are carried out by publication of notifications in the gazette. At this stage, after more than 30 years, respondents cannot be expected to fish out from the record, the relevant documents to establish payment of compensation or taking over of possession with regard to the said property. The immense delay places the respondents to immense handicap and prejudice in the matter of defending these proceedings. There is thus no explanation whatsoever in the petition for the inordinate delay in the Petitioner coming forward to seek relief under Section 24 (2) of the 2013 Act.

6. The Supreme Court has dealt with issue of delay and laches in ***Mahavir v. Union of India (2018) 3 SCC 588***, in the context of the 2013 Act. The said judgment is unambiguous in emphasising that claims that are barred, and where there is total inaction, are not meant to be revived by the 2013 Act. The relevant observations of the Supreme Court in the said decision read as under:

“22. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, Section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under Section 31(1) in such cases would attract only interest as envisaged under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.

Court has rightly observed that such claims cannot be permitted to be raised in the court after they are adjudicated as they are barred. The Court has rightly observed that such claims are barred on the subject matter of inquiry after the lapse of the prescribable period of time and beneficiaries of the claims under Section 24 of the 2013 Act are not the claimants or incumbents. In our opinion, Section 24 bars only those claims that are dead and stale.

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petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years.”

(emphasis supplied)

7. The aforesaid Judgment has been considered by the Supreme Court in the decision of *Indore Development Authority v. Shailendra* reported at (2018) 3 SCC 412, relevant portion of which is reproduced hereunder:-

“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.”

(emphasis supplied)

8. This Court has also dealt with the issue of delay and laches in the case of *Mool Chand v. Union of India* (W.P. (C)4528/2015) dated 17th January 2019, wherein the Court while elaborating the decision of *Mahavir v. Union of India*, (2018) 3 SCC 588 and *Indore Development Authority v. Shailendra*, (2018) 3 SCC 412, on the aspect

of delay and laches, made the following observations:

"34. The question then arises whether only the points of difference between the decisions in *Pune Municipal Corporation* (supra) and *Indore Development Authority v. Shailendra* (supra) and all issues incidental thereto have been referred to the Constitution Bench? In this context it requires to be noted that although several questions were framed in *Indore Development Authority v. Shailendra* (supra), it is only on Question I, viz., on whether the deposit in the RD Account would amount to having tendered compensation for the purposes of Section 24 (2) of the 2013 Act, that there was a difference of opinion between the view expressed in the two decisions viz., *Pune Municipal Corporation* (supra) and *Indore Development Authority v. Shailendra* (supra).

35. The other point of difference was that arising in *Yogesh Neema v. State of MP* (supra) where the correctness of the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* (supra) as regards exclusion of the period covered by the interim orders from the calculation of the period of five years under Section 24 (2) of the 2013 Act was questioned. On this point the three-Judge Bench in *Indore Development Authority v. Shailendra* (supra) unanimously overruled the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* (supra). On this issue no subsequent Bench of the Supreme Court of co-ordinate strength appears to have taken a contrary view. It is doubtful, therefore, whether this issue would be examined by the Constitution Bench.

36. Relevant to the issue on hand, there was no difference of view qua Question III addressed in *Indore Development Authority v. Shailendra* (supra) i.e. "Whether section 24 of Act of 2013 revives barred and

stale claims?" On this question there was no view (much less a contrary view) expressed in *Pune Municipal Corporation* (supra) or for that matter in any other subsequent decision of a smaller, co-ordinate or even larger Bench of the Supreme Court. This question, therefore, was not the subject matter of reference before the Constitution Bench.

37. Consequently, this Court is of the view that although the order passed by the Constitution Bench refers to "all the aspects" being considered by the Constitution Bench, that expression would not include questioning the correctness of the decision of the three-Judge Bench in *Indore Development Authority v. Shailendra* (supra) as far as it holds by a unanimous opinion that Section 24 (2) of the 2013 Act cannot revive old and stale claims."

(emphasis supplied)

9. This Court has decided similar petitions vide judgment dated 31st January 2019 in W.P. (C) 586 of 2016 (*Sushma Purthi v. Union of India*), 25th January 2019 in WP (C) 4919 of 2014 (*Krishan v. Union of India*), 5th February 2019 in W.P. (C) 2702/2019 (*Mohd. Mian v. Union of India*), whereby petition seeking a declaration under Section 24(2) of the 2013 Act, on the ground of delay and laches have been dismissed. Challenge against all these judgments have also been dismissed by the Supreme Court vide SLP (C) No. 11481/2019, SLP (C) No. 13423/2019 and SLP (C) No. 8848/2019, respectively. It also needs to be emphasized that besides the above writ petitions, this court has dismissed several other petitions on the ground of delay and laches and challenge against these decisions, before the Supreme Court, has also similarly been dismissed.

10. Following the aforementioned decisions and in the light of the facts and circumstances listed out hereinbefore, the Court dismisses the present petition both on the ground of laches as well as merits.

SANJEEV NARULA, J.

VIPIN SANGHI, J.

SEPTEMBER 06, 2019

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