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

+ **W.P.(C) 9919/2017**

BIJENDER @ VIJENDER Petitioners

Through: Mr. Vishal Maan and Mr.
Satyavan Rathee Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Ms. Ajay Verma with Mr.
Pawan Kawrani, Advocates for
DDA.
Mr. Siddharth Panda,
Advocates for L&B/LAC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

10.07.2019

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1. The prayer in the petition reads as under:

“i. Issue of an appropriate writ(s), order(s) or direction (s) declaring the entire acquisition proceedings in respect of the land of the petitioner comprising in Khasra No.21//5/2 (0-14) and 15/1 (0-12) total ad-measuring 1 Bigha 06 Biswas (to the extent of share belonging to the petitioner), situated in the revenue estate of Village-Bamnoli, District-South-West, New Delhi initiated vide notification bearing NO. F.9 (50) / 2004 / L&B / LA /13211 dated 04.11.2004 issued under Section 4 of the Land Acquisition Act, 1894 and all subsequent proceedings to have lapsed in view of section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act,2013.”

2. It is stated in the writ petition that the Petitioner is the owner of 1/2 share of land comprising in Khasra No. 21//5/2 (0-14) and 15/1 (0-12), situated in the revenue estate of village-Bamnoli, District -

South-West, New Delhi. The Petitioner has challenged the acquisition proceedings in this Writ Petition as having been lapsed.

3. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') for the acquisition of the land in question was issued on 4th November 2004, followed by declaration under Section 6 of the LAA on 31st October 2005. The impugned Award No. 1/07-08 was passed on 6th August 2008.

4. It is stated in the petition that the other ½ share of the property is owned by one Shri Narender who filed W.P.(C) No. 10670/2015 before this court seeking lapsing of acquisition proceedings. It is stated that on 2nd August 2016 this court passed a judgment declaring the acquisition proceedings as deemed to have lapsed with respect to such land. It is stated that the Petitioner's share is also part of the same land and he has not received any compensation for the acquisition nor has the possession been taken over by the Respondents.

5. In the counter-affidavit filed on behalf of the LAC, it is submitted that the possession of Khasra No.21/5/2(0-14) and 21/15/1 (0-12) was taken and handed over to the DDA on 14th September 2007. On the aspect of compensation, it is submitted that compensation qua the Petitioner i.e. Vijender was deposited with the court of Ld. ADJ vide Cheque No. 810917 dated 16th August 2010.

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, possession of the subject land was immediately

taken over on 14th September 2007.

7. No rejoinder has been filed by the Petitioner to the counter affidavit of the LAC or the DDA.

8. In any event, the assertion by the Petitioner that he continues to remain in possession of the land in question gives rise to a disputed question of fact which cannot be examined in these proceedings. Further, with the compensation having been sent to the Court of Ld. ADJ, it cannot be said that it was not tendered. The fact further remains that the Petitioner has 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 observations have been reiterated in the judgment of the three Judge Bench 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/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.”

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 10th November 2017 as confirmed on 7th February 2018 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 10, 2019
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