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

+ **W.P.(C) 10044/2017**

RAJBAL TYAGI & ORS.

..... Petitioner

Through: Mr. Anuroop P.S and Mr Deepak
Choudhary, Advocates.

versus

GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr.Sanjay Kumar Pathak, Mr. Sunil
Kumar Jha and Mr MS Akhtar,
Advocates for
R-1/LAC/L&B
Mr TS Nanda, Advocate for R-2.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
16.05.2019

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1. The prayers in the petition read as under:

“It is therefore, respectfully prayed that this Hon’ble court may be pleased to issue a writ / order / direction in the nature of certiorari calling for the records of the acquisition proceedings in respect o the land comprised in khasra No.48/2/1 908 biswas) situated in the revenue estate of village Salempur Majra Burari, Delhi, acquired vide award No. 144/86-87 dated 19.9.1986, and further to issue appropriate writ, order or direction declaring the acquisition proceedings having lapsed and have become inoperative after the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act of 2013.”

2. The narration in the petition reveals that the notification under Sections 4, 6 and 17 of the Land Acquisition Act, 1894 (‘LAA’) were issued on 9th February 1979. The impugned Award No.144/86-87 was passed on 19th August 1986.

3. It is further stated that the Petitioners are the co-bhumidars of lands forming part of Khasra No.48/21 (2-08) in the revenue estate of village Salempur Majra, Delhi, where the Respondents have acquired 8 biswas of land by the impugned Award. According to the Petitioners, pursuant to the Award being passed, possession of the land was taken but no compensation has been offered or paid for the same, neither has the land been put to any use. Thereafter, the petition straightaway refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the ‘2013 Act’). There is no explanation offered for the inordinate delay in approaching the Court for relief.

4. In the counter affidavit filed on behalf of the LAC, it is stated that the petition ought to be dismissed due to the inordinate delay by the Petitioners in approaching the Court. It further states that as admitted in the petition, possession of the land was taken way back on 22nd August 1979 but despite that, the Petitioners did not take any steps towards collecting compensation from the acquiring agency. As regards compensation, it is mentioned that “it is humbly submitted that in the Naksha Muntazamin, there is no entry as to whether compensation was paid or not.”

5. In the counter affidavit filed on behalf of the Irrigation and Flood Control

Department, GNCTD, it is stated that land comprised in Khasra No.48/2/1 (0-08 biswas) was acquired by the impugned Award dated 19th August 1986 for the public purpose of construction of 'Sub-minors', and possession of the same was handed over to the acquiring Department on 22nd February 1979. It is further denied that the land has not been put to any use. It is asserted that as per the area Patwari (Burari), there is an irrigation channel in Khasra No.48/2/1 and as such, the subject land has been put to proper use as it is being utilized by the Irrigation and Flood Department.

6. No rejoinder has been filed by the Petitioners to either of the counter affidavits. In any event, the assertion by the Petitioners regarding the non-use of the land in question gives rise to a disputed question of fact.

7. It was contended by Mr. Anuroop, learned counsel for the Petitiiers, that the Respondents had to mandatorily issue notices to the Petitioners for collecting compensation. The fact further remains that the Petitioners were fully aware of the passing of the Award on 19th August 1986 and do not dispute that possession was taken way back on 22nd August 1979. Yet, they made no effort to seek compensation or question the land acquisition proceedings for more than three decades. In short, the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

8. 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.”

9. The above decision has been reiterated by 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 negated 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.”

10. The above observations have been followed by this Court in several orders including *Mool Chand v. Union of India 2019 (173) DRJ 595[DB]* and similar petitions have been dismissed on the ground of laches.

11. For the aforementioned reasons, the writ petition is dismissed on the ground

of laches, but in the circumstances, with no orders as to costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 16, 2019