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

W.P.(C) 9507/2015

UPENDER JAIN & ORS.

.... Petitioners

Through: Mr. K. Sunil, Advocate

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Yeeshu Jain, Standing
Counsel for LAC/L&B along with
Ms. Jyoti Tyagi, Advocate.

Mr. Parvinder Chauhan, Advocate for
Respondent No. 3

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

08.08.2019

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**C.M.No. (for impleadment of LR's of Petitioner No. 3) to be
numbered by the Registry)**

1. This is an application for substitution of Petitioner No. 3 by legal representatives (LRs). The application is allowed and the amended memo of parties is taken on record.

W.P.(C) 9507/2015

2. The prayers in the present petition read as under:

“i) Issue writ of mandamus or any other writ, order or direction in the said nature thereby quashing entire proceedings of the acquisition thereby quashing the award in respect of the property no. 2/3396/XI Delhi Gate New Delhi-110002 having award no. 784/1298 Dt. 9.11.1949, in respect of property no. 3397-3398/XI Delhi Gate New Delhi-110002 having award no. 861/1424 Dt. 27.2.1950 and in respect of the property no. 3394-3395/XI Delhi Gate New Delhi-110002 and declaring that the proceedings under Land Acquisition Act, 1894 shall be deemed to have lapsed by operation of section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

ii) Issue writ of mandamus or any other writ, order or direction in the said nature thereby releasing the properties no. 3394 to 3398/XI Delhi Gate New Delhi-110002 from entire acquisition proceedings by operation of section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.”

3. The background facts are that the land in question i.e. property nos. 3397-3398/XI Delhi Gate, New Delhi -110002 (hereafter, ‘subject land’) was sought to be acquired on behalf of the Delhi Improvement Trust for the purpose of the Delhi Ajmeri Gate Scheme. Accordingly, the Delhi Improvement Trust under Section 36 of the United Province (Town Improvement) Act, 1919 prepared a scheme for improvement of notified slum areas in Delhi Gate to Ajmeri Gate and the said scheme was known as the Delhi-Ajmeri Slum Clearance Scheme, for which a Gazette Notification was accordingly issued on 19th March, 1938. The subject land was part of the foregoing scheme. This was followed by a notification dated 29th April, 1946 under Section 42 of the aforesaid Act. The Special Land Acquisition Collector, Delhi Improvement Trust passed three awards being Award Nos.

1059/1474, 861/1424 and 784/1298, in respect of the subject lands, dated 16th February, 1953, 27th February, 1950 and 9th November, 1949 respectively.

4. As far as the Petitioners are concerned, it is stated that the properties situated on the subject land are ancestral properties, which the Petitioner Nos. 2 to 9 inherited from their grandfather, Shri Raj Kishore Jain. In respect of Property No. 3396/XI, Delhi Gate it is stated that the Petitioner's grandfather came to own the said property by a will executed by one Smt. Javitri Devi on 10th February, 1959. A copy of the will has been annexed with the petition. It is stated that the Petitioner Nos. 2 to 9 have executed a General Power of Attorney ('GPA') in favour of the Petitioner No. 1, dated 13th September, 2014, for the purpose of instituting the present petition. It is stated in the petition that despite the initiation and completion of acquisition proceedings, the Petitioners continued to remain in possession of the subject land.

5. It is stated in the petition that the Award was announced under Section 17 A of the United Province (Town Improvement) Act, which enables the Land Acquisition Collector (LAC) under the Land Acquisition Act, 1894 ('LAA'), upon payment of compensation, to handover the acquired land to the Trust. It is stated in the petition that the acquisition proceedings were conducted without hearing Shri Raj Kishore Jain. It is stated that in respect of Award No. 1059/1474, the LAC failed to decide the question of title or interest in property no. 3394-3395/XI and made a reference under Section

31 (2) of the LAA for that purpose on 15th April, 1953. It is further stated that compensation of the sum of Rs.8998/- was sent to the LAC.

6. The Petitioners contend that no compensation in respect of the subject land or any of the other portions of the subject land has been paid to the Petitioners. It is also stated that the physical possession of the subject land was never taken and that Petitioners have remained in possession of the subject land. To substantiate this, the Petitioners have annexed copies of the electricity bill for the premises on the subject land.

7. The Petitioners state that they wrote several letters to the Delhi Urban Shelter Improvement Board ('DUSIB') requesting to not take any action that would dispossess the Petitioners. Reference has also been made to a resolution of the Slum Clearance and Improvements Committee, dated 5th June, 1970, where it has been stated that the Delhi Improvement Trust could not take possession of the subject land under Section 16 of the LAA and that alternative accommodation needed to be provided to the occupants living in the acquired area.

8. It is contended that the aforesaid resolution conclusively shows that possession has not been taken. It is also stated that the Petitioners by a writ petition being W.P. (C) No. 5145/1994, had challenged the land acquisition proceedings on the ground that the public purpose for which it was acquired had been abandoned. It is stated that the Court, however, declined to quash the proceedings. It is stated that when the contentions raised by the Petitioners in the writ petition had not been considered by this Court, the

Petitioners filed a civil suit in this Court, which was dismissed by an order dated 18th March, 2015. It is averred that the Petitioners filed an appeal against the order of this Court, which is pending final disposal.

9. Counter affidavits have been filed on behalf of the DUSIB and the DDA. In the counter affidavit of the DUSIB, it is averred that possession of Property Nos. 3398 and 3410/XI was taken on 31st March, 1951 and the property is now free of all encumbrances as compensation of a sum of Rs.2390/- was paid. It is further averred that the property was transferred by the DDA to the MCD and that the property is now with the DUSIB. It is stated that notice dated 24th May, 1962 for depositing Rs.370.12 as damages was issued to Shri Raj Kishore and that even a warrant was issued against him, subsequently, for payment of damages.

10. As regards property No. 3397/XI, it is stated that possession was taken on 15th March, 1950 free from all encumbrances after giving compensation of Rs.2907/- on 27th February, 1950. It is stated that the orders in the civil suit and the writ petition, dismissing the Petitioners' claim of ownership over the subject land. It is stated that the appeal against the order of this Court in the civil suit stands dismissed as withdrawn.

11. In the counter affidavit of the DDA, it is contended that the petition is barred by significant delay and laches. It is further averred that a bare perusal of the Will of Smt. Javitri Devi dated 8th July, 1940, makes it apparent that the subject land was already acquired by the Government and that compensation had already been taken by her. It is also averred that the

subject land was acquired for the DAG Slum Clearance Scheme of the MCD, and that it is not the DUSIB that the land belongs to. It is averred that, accordingly, the DUSIB must be removed from the array of parties.

12. A rejoinder has been filed by the Petitioner to the counter affidavit of the DUSIB, where the averments of the DUSIB have been denied and the contents of the writ petition reiterated.

13. The Petitioners' assertion that possession of the subject land remains with them and compensation has been paid gives rise to disputes questions, which cannot be examined in the present petition. The fact further remains that there is no explanation for the inordinate delay in approaching the Court for relief.

14. On the aspect of laches, in *Indore Development Authority v. Shailendra (2018) 3 SCC 412* a three Judge Bench of the Supreme Court of India observed as under:

“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.”

15. 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 (2014) 3 SCC 183* regarding the tendering of compensation, and 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 its decision in *Mool Chand v. Union of India (2019)173 DRJ 595 (DB)*.

16. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 6th October, 2015 as confirmed on 13th November, 2017 stands hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 08, 2019
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