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

+ **W.P.(C) 11645/2017**

SHRI DESH RAJ ARYA & ORS.

..... Petitioners

Through: Mr. Sarfaraz Nabi, Advocate for Mr.
Ramesh Kumar Sharma, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Abhinav Singh, Mr. Mohd. Kaisari
Ansari, Advocates for R-1.
Mr. Arun Birbal, Mr. Ajay Birbal for
R3/DDA.
Mr. Yeeshu Jain, Standing Counsel
and Ms. Jyoti Tyagi for L&B/LAC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

06.02.2019

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Dr. S. Muralidhar, J.:

1. The prayers in the petition read as under:

“i) Issue a writ of mandamus/certiorari or any other appropriate writ, order or direction in the nature thereof quashing, declaration under Section 6 of the L.A. Act the Award No. 16/1985-86 and in consequence thereof quashing the notification issued U/s 4 of the Land Acquisition Act, 1894.

ii) Issue a writ of mandamus/certiorari or any other appropriate writ, order or direction in the nature thereof, thereby directing the respondents to denotify the land of the petitioners bearing Khasra. No. 71/1 (3-12), 71/2 (4-16), 71/9/2 (1-12), 54/22 (4-16), 54/23 (4-16), situated in the revenue estate of Village Rithala, Delhi and as consequence thereof award the benefits of provisions of Section 24(2) of the Act of 2013.

iii) Award appropriate costs in favour of the petitioners and against the respondents in the facts and circumstances of the

case

iv) Any other or further relief which this Hon'ble Court deems fit and proper and expedient may also be passed in favour of the petitioners and against the respondents in the facts and circumstances of the case and to secure ends of justice.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 31st December 1981, followed by declaration under Section 6 of the LAA on 16th April 1984. The impugned Award No. 16/1985-86 was passed on 10th September 1985. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the counter-affidavit filed on behalf of the LAC, it is submitted that the physical possession of Khasra Nos. 71/1(3-13), 71/2(4-16), 71/9/2(1-12) was taken on 3rd May 2007 and of Khasra Nos. 54/22(4-16), 54/23(4-16) was taken on 19th September 1985 handed over to the beneficiary department. It is also submitted that compensation with respect to Khasra No. 54/22(4-16), 54/23(4-16) has been paid to its recorded owner and compensation for the rest of the lands is lying in the RD.

4. 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 acquisition was for the public purpose of the “Rohini Residential Scheme”. As regards possession, it is stated:

“Actual physical possession of land comprising Khasra no. 54/22 (4-16) and 23 (4-16) was handed over to DDA on 19.09.1985. Actual physical possession of land comprising khasra nos. 71/1 (3-12) to the extent of 2-00 was handed over to DDA on 16.11.1995. Remaining land of the said Khasra admeasuring 1-12 was handed over to DDA on 03.05.2007. Actual physical possession of Khasra no. 71/2 min (4-10) and

71/9/2 (1-07) was handed over to DDA on 03.05.2007. However, formal repossession of 71//2 min (0-06) and 9/2 (0-05) was handed over to DDA by LAC / Land and Building Department of the Government of NCT of Delhi. The area was notified under section 22 (1) of the Delhi Development Act vide the notification bearing no. F.9 (13)/78/L&B dated 25.09.1985.”

5. No rejoinder has been filed to the counter-affidavit of the LAC. The rejoinder filed by the Petitioners to the counter affidavit of DDA merely reiterates the averments in the petition. The Petitioners maintain that they have not received any compensation. In the rejoinder the Petitioners further state:

“(V) including the alleged details of payment of compensation in respect of the subject land given in the form of tabulation, it is submitted that the DDA has tried to make the whole issue confused. In fact, the DDA ought to have put its record straight before this Hon’ble Court to prove its points on record that there is no lapse of proceedings in the instant case and the claim of the petitioners are not legally impermissible by the provisions of Section 24(2) of the 2013 Act. The Annexure-B being vague and incorrectly relied upon by the DDA containing the copy of Statement-A which is dated 29.3.2005 but seeks the assistance of the recent judgment titled as *Indore Development Authority v. Shailender*, which judgment has yet to attain the finality after the due consideration to be given, by the larger bench. As such the judgment of the Hon’ble Supreme Court is of no assistance to the respondents.

However, it is further submitted that in so far the payment of compensation is concerned as shown in the tabulation at Page 3 of the counter affidavit, the Table-III along with information obtained under RTI already placed on record along with the writ petition may be referred to for the purpose of clarifying the issue of payment of compensation and the status of the land in respect of land comprising of Kh. No. 71/1 (3-12), 71/9/2/(1-12), 71/2 (4-16), 54/22 (4-16) and 54/23 (4-16). Similarly, for the purpose of the payment of Rs. 1,81,402/- as shown paid vide refund voucher No. 146 dated 29.3.2005, it is made clear that the recoded owner Nahar Singh S/o Fateh Singh owned the land in Kh. No. 52/22 and 23 not in Khasra No. 54/22 and 23 as set out

against items No. 212 in the counter affidavit.”

6. It should be noted at this stage that although initially on the application filed by the Petitioners for interim relief, being CM No. 744 of 2018, this Court on 8th January 2018 directed parties to maintain status quo, the DDA filed CM No. 16571 of 2018 seeking vacation of the stay. Both applications were disposed of by this Court by a common order passed on 29th May 2018 which reads thus:

"CM Nos. 744/2018 (stay) and CM No.16571/2018 (vacation of stay)

The petitioners have filed the present writ petition seeking a declaration that the acquisition proceedings with respect to their lands comprised in khasra Nos. 71/1(3-12), 71/2(4-16), 71/9/2(1-12), 54/22(4-16), 54/23(4-16) situated in the revenue estate of Village Rithala, Delhi are deemed-to have lapsed in view of Section 24 (2) of the, Right, to Fair (Compensation and Transparency in Land, Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 2013-Act) as neither physical possession has, taken nor compensation tendered.

After notice was issued in the matter, the petitioner had filed CM No. 744/2018 seeking interim protection fearing dispossession at the hands of the DDA. This Court on 08.01.2018 had directed the parties to maintain status quo with respect to the nature, title, possession and construction pertaining to the subject land. Subsequently, the DDA filed CM No. 16571/2018 with a prayer that the interim order granted on 08.01.2018 be vacated.

Both the applications have been heard together and are being disposed of by a common order.

While counsel for the petitioners submits that at the area in question an unauthorised colony is in existence which is likely to be regularised. He submits that DDA has taken a conscious decision not to dispossess the petitioners till the issue of regularisation of the colony is finalised. Reliance is placed on a note filed at page 406 of the paper book which reads as under:

"Under the chairmanship of VC DDA when Shri Udit Raj,

Hon'ble MP was also present. It was decided that since the area in question is a part of the unauthorised colony, no action be taken till the issue of regularisation of colony by U.D. Deptt. GNCTD is finalised. Submitted for orders please.

SD/-

12.09.2014"

Counsel for petitioners further submits that on an appeal filed before the Central Information Commission the petitioners were informed that DDA has decided not to carry out any demolition. The extract of the reply received reads as under:

"Both parties made submission. The PIO L.G. Secretariat stated this RTI application has been transferred to DDA. The appellant says that on 15.11.2014 demolition was done, but has not been given clear instruction in this regard. The respondent authority of DDA submitted that now on 12.09.2014 DDA decided not to demolish the houses."

Mr Birbal, learned counsel appearing for the DDA, submits that the DDA does not propose to demolish any house in the area in question other than the area which comes on the road which remains incomplete on account of the interim protection granted. Mr Sharma, counsel for petitioners, very fairly agrees that subject to the condition that only the area which forms part of the road, no other area is demolished, the petitioners would have no objection to the same.

Accordingly, we make it clear that the officers of the DDA will at the first instance visit the area in question and demarcate the area where the road is likely to be constructed. After the area is demarcated, time of four weeks will be granted to enable the petitioners to remove their belongings from the area which is marked by the officials of the DDA. After four weeks, the demolition shall be carried out. With these directions, both the applications are disposed of on the above agreed terms."

7. One fact which emerges from the above order is the admission by the Petitioners that the "the area in question an unauthorised colony is in existence which is likely to be regularised." This Court has in several

decisions in the recent past held that the relief under Section 24 (2) of the 103 Act would not be available in respect of properties forming part of an unauthorised colony awaiting regularisation. Illustratively, reference may be made to the order dated 17th January 2019 passed by this Court in W.P. (C) No. 4528 of 2015 (*Mool Chand v. Union of India*) where it was observed as under:

“48. The third aspect of the case is that the Petitioner admits that the land in question is part of an unauthorised colony. The very basis for seeking regularisation of an unauthorised colony is that it is located on land which belongs either to the public or to some other private parties. The Petitioners would therefore not have the locus standi to seek a declaration in terms of Section 24 (2) of the 2013 Act in such cases since the very fact that they have sought regularisation on the basis that they are in unauthorised colony would be an admission that they do not otherwise have any valid right, title or interest in the land in question.

49. This Court has by order dated 19th December 2018 in WP(C) No.190/2016 (*Harbhagwan Batra v. Govt. Of NCT of Delhi*) and order dated 8th January 2019 in WP(C) No.10201/2015 (*Gurmeet Singh Grewal v. Union of India*) negatived similar pleas by the Petitioners who were trying to seek similar declaration of lapsing even while admitting that they were pursuing regularisation of an unauthorised colony.

50. In a decision dated 10th January 2019 in W.P. (C) 3623 of 2018 (*Akhil Sibal v. Govt. of NCT of Delhi*) this Court observed in this context as under:

“18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting regularization orders. A large portion of these colonies are by way of encroachment on public land, some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premise on which such regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those structures. That very basis gets

contradicted as some of them try to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable.”

8. Consequently, the prayers in the present petition cannot be granted. In any event, the assertion by the Petitioners that they continued to remain in possession of the land in question or that they have not received compensation gives rise to disputed questions of fact which cannot possibly be examined in these proceedings. Additionally, considering that the acquisition in the present case was for the Rohini Residential Scheme, possession of the land in question is deemed to be with the DDA in terms of the decision dated 18th October 2016 of the Supreme Court in the IAs in SLP (C) 16385-88 of 2012 (**Rahul Gupta v. DDA**)

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

11. The above observations have been followed by this Court in several orders including the order dated 17th January, 2019 in WP(C) No. 4528/2015 (*Mool Chand v. Union of India*) and similar petitions have been dismissed on the ground of laches.

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.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 6, 2019

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