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

+ **W.P.(C) 10830/2015**

AHMED HUSSAIN

..... Petitioner

Through: Mr. Raghuvinder Varma,
Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Rajesh Kumar, Advocate
for Respondent/UOI.
Mr.Dhanesh Relan, Standing
Counsel for DDA.
Mr.Yeeshu Jain, Standing
Counsel
with Ms.Jyoti Tyagi, Advocate
for LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

02.07.2019

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

“a) Issue a writ of certiorari and/or any other writ, order or direction of similar nature declaring the entire acquisition proceedings with respect to the land of the petitioner comprising in Khasra Nos. 36/11 (04-04), 45/1 (04-16), 45/2 (04-04), 45/3/2 (02-08), 45/8 (04-16), 45/9 (4-16), 45/11 (02-14), 45/12 (04-11) and 45/26 (00-05) within the revenue estate of Village Khureji Khas, Delhi having lapsed and further quashing the impugned notification No. F.15 (111)/59-LSG dated 13.11.1959 issued under section 4, notification no. F.6 (19)/65-L&H dated 18.03.1966 of the Land Acquisition Act, 1894 and the award number 22-70/71 announced on 28.10.1971 under section 11 of the Land Acquisition Act, 1894 qua the said land.

b) Issue a writ of certiorari and/or any other writ, order or direction of similar nature declaring various acts, actions and deeds of the Respondents in continuing with the impugned acquisition of the land of the petitioner after coming into force of the Right to Fair Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the New Land Acquisition Act') with respect to above referred land of the petitioner, situated in the revenue of Village Khureji Khas Delhi.”

2. The background facts are that the land in question located in Village Khureji Khas was notified for acquisition for a public purpose under Section 4 of the Land Acquisition Act, 1894 ('LAA') on 13th November 1959 followed by declaration under Section 6 LAA on 18th March 1966. The impugned Award No.22/70-71 was passed on 28th October 1971.

3. It is mentioned in the petition that the Petitioner inherited the land from his ancestors who were cultivators thereof and that the ownership/ *bhoomidari* rights of the Petitioner has been duly recorded in the relevant revenue records i.e. Khatauni. A copy thereof has been annexed along with the petition. It is further stated in para 8 of the petition that subsequent to the passing of the impugned Award, an unauthorized colony by the name of Guru Angad Nagar came into existence on the acquired land in village Khureji Khas which included the Petitioner's land. It is stated that the LAC could not take possession of the acquired land due to it being a 'substantially built up area'. It is also stated that out of the land of Khasra No.45/11 (02-14) owned by the Petitioner, "some portion was used for construction of a community center but 700 square yards of land out of that Khasra also remained with the petitioner." Thereafter the petition straightaway refers to the passing of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act'). It is asserted that since possession of the subject land has not been taken over neither has compensation been paid to the Petitioner or deposited with the Court, the impugned acquisition proceedings stand lapsed in terms of Section 24 (2) of the 2013 Act.

4. In the short counter affidavit filed on behalf of the LAC, it is stated subsequent to the impugned notifications being issued under Sections 4 and 6 of the LAA for the planned development of Delhi, the impugned Award No.22/70-71 was passed on 29th July 1970. Actual vacant physical possession of the subject land was duly taken on 24th July 1971 and handed over to the DDA after preparing possession proceedings on the spot. It is stated that compensation amount for the subject land was deposited in the revenue deposit (RD). However, the recorded owners of the subject land never came forward to claim/collect the compensation.

5. In the counter affidavit filed by the DDA, it is confirmed that the physical possession of the subject land was handed over to it by the LAC/L&B Department of the GNCTD on 24th July 1971. It is further stated that the "above said land is placed at the disposal of the DDA vide notification under Section 22(i) of the Act No.F8 (49) 63 L&H dated 17.4.1972 and F10 (7) 80 L&B dated 20.7.1981." It is mentioned that the land has been duly, validly and legally been acquired by the Government for the public purpose of planned development of Delhi. The status of the land as per records has been submitted in a tabular format in para 7 of the affidavit. It is stated that the compensation for the acquired land in village Khureji Khas was released through the

Revolving Fund, through the Commissioner (L&H), to the concerned LAC at the time of announcement of the impugned Award. No rejoinder has been filed to either of the counter affidavits.

6. The Petitioner has himself averred that the land in question forms part of an unauthorized colony known as Guru Angad Nagar. In respect of the lands that form part of unauthorized colony this Court has taken the consistent view that no relief under Section 24(2) of the 2013 Act can be granted. The legal position has been explained by this Court in *Mool Chand v. Union of India 2019 (173) DRJ 595[DB]* 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.”

7. The above decision has been followed and the legal position has been reiterated by this Court in an order dated 25th January, 2019 in W.P.(C) No.3438/2015 (*Krishna Devi v. Union of India*). As clarified in those orders, the dismissal of the present petition will not come in the way of the Petitioner pursuing the claim for regularisation of the unauthorised colony in question.

8. Apart from the above, with no rejoinder having been filed by the Petitioner to the counter affidavits of the LAC or the DDA, the issues regarding the taking over of possession of the subject land and the entitlement of the Petitioner to compensation give rise to disputed questions of fact which cannot be examined in this petition. The fact further remains that the Petitioner has no explanation to offer for the inordinate delay in approaching the Court for the relief, with respect to an Award that was passed in 1970.

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 decision has been reaffirmed by the judgment of a 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 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/negatived, 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. For all of the aforementioned reasons, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order dated 24th November 2015 as confirmed on 18th December 2017 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 02, 2019/tr