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

+ **W.P.(C) 9746/2015 & CM APPL. 1053/2018**

DINESH KUMAR SHARMA Petitioner

Through: Mr. Aayush Agrawal, proxy counsel for
Ms. Geeta Dhingra, Advocate

versus

LT. GOVERNOR OF DELHI & ORS. Respondents

Through: Ms. Mrinalini Sen, Standing Counsel for
DDA
Mr. Sanjay Kumar Pathak, Mr. K.K.
Kiran Pathak, Mr. Sunil Kumar Jha and
Mr. M.S. Akhtar for L&B/LAC
Ms. Suman Chaudhary for applicant in
CM APPL. No. 1053/2018

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

ORDER
% **16.04.2019**

1. The prayers in the petition read as under:

“a. pass a writ, order or direction in the nature of writ of declaration declaring the acquisition proceedings initiated with respect to award No. 1826 dated 3.5.1965 of acquired land measuring 7 bighas 7 biswas in Village Mohd. Pur - Munirka, New Delhi including petitioner's land (5 biswas) 500 sq. yds. is a nullity and unenforceable because its compensation was not paid nor its possession taken by the govt. ;

b. petitioner land admeasuring only 500 sq. yds. covered in award

No. 1826 dated 3.5.1965 in Khasra No.201/2, Village Mohammadpur- Munirka, New Delhi as deemed to have lapsed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 ;

c. further pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondents not interfere with peaceful physical possession and enjoyment of the land admeasuring 500 sq. yds. in khasra No.201/2 Vilage Mohammadpur- Munirka, New Delhi covered in award No. 1826 dated 3.5.1965..”

2. The Petitioner states that his late father came to the aforementioned village in 1953-54 and was allotted 500 sq.yds. of land there. It is stated that in 1994, the villagers demanded that the father of the Petitioner give up the area given to him and started demolishing the property. A suit for permanent injunction was filed in the Delhi High Court. It which was subsequently transferred to the District Court where it was dismissed on 7th March 2015. The Petitioner then filed RFA No. 348/2015 in which stay was granted by order dated 31st August 2015 of this Court.It is stated that the Petitioner is still in possession of the property and no compensation has been paid.

3. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 6th November 1958, followed by declaration under Section 6 of the LAA on 18th November 1964. The impugned Award No. 1826 was passed on 15th June 1965. There is no explanation in the petition for the inordinate delay in approaching the Court for

relief.

4. In the counter-affidavit filed on behalf of the LAC, it is submitted that the possession of Khasra No. 201/2 (7-07) was taken on 3rd July 1965. It is also submitted that the Petitioner has not filed any revenue nor any title documents to support the contention that the Petitioners or their predecessors-in-interest were ever the recorded owners of the land. It is further submitted that the subject land belongs to *Shamlat Deh* (Public Land for villagers).

5. The LAC states that the Petitioner or his predecessor-in-interest were not domiciled in the village. It is stated that the Petitioner is an encroacher. On the aspect of compensation, it is submitted that all interested persons were tendered compensation vide notices under Section 12(2) of the LAA. It is stated that:

“In the notice the recorded owner was asked to appear before the LAC either personally or by authorised agent on or before 18.08.1965. It was further stated that interest will not be payable in case of failure to appear. Notices u/s 12(2) was sent to Jai Lai S/o Jaika (Received by i^anilfiit-^ on 12.08.1965), Bhoop Singh S/o Nathwa (Received by Pyare Lai on 12.08.1965), Hoshiyar Singh s/o Shei Ram Mehar (received by Randhir Singh on 12.08.1965), Harnand Singh S/o Jhamdoo (received on 12.08.1965 by Harhand Singh), Chatter Singh S/o Jhamdoo (received on 12.08.1965), Laje Ram s/o Ram Swaroop (received on 12.08.1965), Bhartoo s/o Chaita (received on 12.08.1965), Ramphal s/o Chaita (received on 12.08.1965), Chanda S/o Hari (received on 12.08.1965), Passa s/o Hari (received on 12.08.1965), Phool Kumar w/o Sampat Kumar (received on 12.08.1965). It is submitted that records are very old. Payment filed is presently not traceable, efforts are being made to trace the same.”

6. No rejoinder has been filed by the Petitioner to the counter affidavit of the LAC.

7. The uncontroverted affidavit of the LAC gives rise to disputed questions of fact *qua* both possession and compensation. These 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.

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 reaffirmed 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 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.”

10. 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*.

11. 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.

12. The interim order dated 14th October 2015 passed by this court which stood confirmed on 6th November 2017 stands vacated. The pending application is dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 16, 2019
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