

\$~47

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

+ **W.P.(C) 11603/2017**

M/s M.K. RUBBER MILLS Petitioner

Through: Mr.P.S. Bindra, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Mr. Mananjay Mishra with Mr.
Vijayesh K. Singh for PWD.

Mr. Yeeshu Jain, Standing Counsel
and Ms. Shilpi Chaudhary for
L&B/LAC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

16.04.2019

%

1. The prayers in the petition read as under:

“(i) CERTIORARI FOR QUASHING OF THE AWARD NO.1/2008-09/North-East, passed by Respondent No.2 with respect to Plot No.23, Admeasuring 500 Sq. Yds. comprised in Khasra No. 1154/320 situated in Village Jhilmil Tahirpur, Ilaka Shahdara, Delhi since the acquisition proceedings in respect thereof have lapsed in terms of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(ii) PROHIBITION Restraining the Respondents from interfering in the peaceful possession and enjoyment of Plot No.23, Admeasuring 500 Sq. Yds. comprised in Khasra No. 1154/320 situated in Village Jhilmil Tahirpur, Ilaka Shahdara, Delhi.”

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 14th October 2005, followed by declaration under Section 6 of the LAA on 5th October 2006. The impugned Award No. 01/08-09 was passed on 22nd July 2008. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. The Petitioner states that "he is the owner of Plot No.23, Admeasuring 500 Sq. Yds. comprised in Khasra No. 1154/320 situated in North East Village Jhilmil Tahirpur, Ilaqa Shahdara, Delhi under and by virtue of Sale Deed dated 24.10.1973 duly registered in the office of Sub Registrar, Assurances". It is admitted in Para V(2) of the petition that physical possession of the subject land has been taken over by the PWD.

4. In the counter-affidavit filed on behalf of the DDA, it is submitted that the possession of Khasra No. 1154/320/306/2 was taken over by the LAC and handed to the DDA on 9th September 2009. 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. On the aspect of compensation, it is submitted that:

"It is however submitted that since the petitioner was not the recorded owner of the subject land as no khatoni has been filed and the subject land has been, shown in the name of Nahar Singh S/o Dharam Singh, the compensation was deposited with the Reference Court u/s 30-31 of Land Acquisition Act, 1894 on 22.3.2016."

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

6. In any event, the assertion by the Petitioner that he continues to remain in possession of the land in question gives rise to a disputed question of facts. The fact further remains that the Petitioner has no explanation to offer for the inordinate delay in approaching the Court for the relief.

7. 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.”

8. 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/negatived, 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.”

9. 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*.

10. 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.

I.S. MEHTA, J.

APRIL 16, 2019/tr