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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10180/2015**

R.K. GUPTA

.... Petitioner
Through: Mr. Vishal Mann, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

.... Respondents
Through: Mr. Yeeshu Jain, Standing
Counsel for LAC along with Ms.
Jyoti Tyagi.
Ms. Komal Sorout, Advocate for
DDA.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

% **ORDER**
02.08.2019

1. The prayer in the present petition reads as under:

“i. Issue of an appropriate writ, order or directions declaring the entire acquisition proceedings in respect of the land of petitioners comprised in Khasra no. 1101 min (2-8) total admeasuring 2 Bigha 8 Biswas, situated in revenue estate of Village Malikpur Kohi @ Rangpuri, New Delhi to have lapsed in view of section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013”

2. The background facts are that the land in question i.e. 2 Bighas 8 Biswas comprised in Khasra No. 1101 min (2-8), situated in the revenue estate of Village Malikpur Kohi, Rangpuri, New Delhi (hereafter, ‘subject land’) was notified under Section 4 read with Section 17 of the Land Acquisition Act

(‘LAA’) on 27th June, 1996 for the public purpose of “development of Vasant Kunj Phase IV”. This was followed by a declaration under Section 6 of the LAA dated 10th January, 1997. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 2/98-99 on 6th January, 1999.

3. As far as the Petitioner is concerned, it is stated in the petition that the Petitioner is the recorded owner of the subject land. The Petitioner has sought to demonstrate this by annexing an extract of the *Khasra Girdawari* of the subject land for the year of 1999. It is averred in the writ petition that possession of the subject land was not taken and remains with the Petitioner. It is also averred that compensation has not been deposited or paid to the Petitioner. Thereafter, the petition straightaway refers to the passage of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘2013 Act’) and the Petitioner’s entitlement to a declaration of deemed lapsing under Section 24 (2) of the said Act on the ground that neither has possession of the subject land been taken nor compensation paid.

4. Counter affidavits have been filed on behalf of the LAC and the DDA. In the counter affidavit of the LAC, it is averred that as regards the award in question, many landowners approached this Court in *Vasant Kunj Enclave Housing Welfare Society v. Union of India* [W.P.(C) 1953/1997], seeking the quashing of the LAA Section 6 declaration and that in the said writ petition, status quo interim orders were passed. It is also stated that by its judgment dated 4th May, 2012 the Court quashed the LAA Section 6 declaration. It is averred that, thereafter, the LAC issued a public notice on

21st November, 2012, inviting objections under LAA Section 5-A from interested persons. It is averred that this notice was challenged by land owners by way of two writ petitions i.e. W.P. (C) 7795/2012 and W.P.(C) 7802/2012 pursuant to which the Court stayed the impugned notice. It is also stated that the Court directed the parties in both writ petitions to maintain status quo on 11th October, 2013. It is averred that by a judgment dated 12th October, 2015 this Court dismissed W.P.(C) 7802/2012 as withdrawn, giving the Petitioners to approach the Court individually.

5. It is averred that the land bearing the Petitioner's Khasra No. 1101 formed a part of W.P. (C) 7802/2012 and that acquisition proceedings could not be completed due to interim orders in the said writ petition. It is averred that a stay in respect of the subject land remained in force till 12th October, 2015 and that the "acquisition proceedings again remained interdicted by this Court". It is further stated that in order to complete the land acquisition proceedings, the LAC had issued individual notices inviting objections under LAA Section 5-A.

6. It is stated that the report in respect of the hearing of objections has been sent to the L&B Department, Government of NCT of Delhi and that finally, a LAA Section 6 declaration dated 4th July, 2017 has been issued. It is stated that Khasra No. 1101 was included in the said declaration and that the same was published in newspapers, in accordance with law. As regards possession, it is averred that possession is yet to be taken as possession proceedings are yet to be completed. In respect of compensation, it is

averred that the compensation amount has not been received from the requisitioning authority.

7. Further, reference has been made to the judgment of the Supreme Court in *Abhey Ram v. Union of India (1997) 5 SCC 421* to contend that a “stay granted in respect of some would be applicable to others also and the period of stay would be excluded”. It is further stated that de-notification of an area as ‘development area’ under Section 12 of the DDA Act relates only to transfer of building control activities and maintenance and services in that area and that, as such, it cannot have any effect on the impugned public notice or the ongoing acquisition proceedings.

8. In the counter affidavit of the DDA, it is averred that the Petitioner has not filed any document through which he could validly claim a right, title or interest in the subject land. It is further averred that the DDA has released the entire compensation of Rs.13,47,00,000/-, which covers the subject land. It is averred that the said compensation has been sent to the L&B Department on 10th October, 1996 through a cheque [cheque no. 029530]. It is also averred that the 2013 Act is not applicable to the facts of the present case as possession of the subject land has been taken and the Petitioner is only encroaching on Government land.

9. No rejoinder has been filed on behalf of the Petitioner to the counter affidavit of the LAC or the DDA. Be that as it may, the assertion of the Petitioner that he continues to remain in possession and has not been paid compensation gives rise to disputed questions of fact, which cannot be

examined in the present petition. The fact also remains that there is no explanation in the petition for the inordinate delay in approaching the Court for relief.

10. 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.”

11. 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)*.

12. Further, if indeed the Petitioner approached the Court earlier, challenging the LAA Section 6 declaration and subsequently, the notice inviting objections under LAA Section 5-A, it would not be open to the Petitioner now to seek a declaration of deemed lapsing under Section 24 (2) of the 2013 Act. The position in this regard has been explained by this Court in *Shivi Talwar v. Government of National Capital Territory of Delhi (174) DRJ 390 (DB)*.

13. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 2nd November, 2015 as confirmed on 29th January, 2018 stands hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 02, 2019
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