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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 817/2016

JAIPAL

.... Petitioner

Through: Mr. Rahul Sharma,
Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

.... Respondents

Through: Mr. Yeeshu Jain,
Standing Counsel for
LAC/L&B along with Ms.
Jyoti Tyagi.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

07.08.2019

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

A) declaring the proceedings vide Award no. 25/2005- 06/DC/NW dated 06.02.2006 under Land Acquisition Act 1894 for acquisition of land of Village Kirari Suleman Nagar Patti Nithari, Delhi, under Item No. 40-42, as "deemed to be have lapsed" in terms of Sec 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, qua the agricultural land.

i) Under Khasra No. 4//10(4-16), 5//6(4-10),9//7(4-16), 9//16MIN(3-07), 9//25(3-14) and 17//5(4-6) all total measuring 25 bigha and 09 biswas wherein the petitioner has undivided share measuring 4 bighas 9.3/40 biswas,

ii) under Khasra No. 21//22(4-16), 36//24(4-16), 37//2(4-12), 37//3/1(2-00), 41//4(4-16), 41//7(4-16), 41//8(4-16), 41//13/3/1(1-14) total measuring 32 bigha and 6 biswas wherein the petitioner has undivided share measuring 1 bigha and 5 biswas.

B) Direct the respondent no. 4 to make necessary entries in the revenue record as to the cancellation of award no. 25/2005-06/DC/NW and also make necessary entries involving the share of the petitioner in the revenue records as per the /corrigendum dated 28.03.2007 in Khata Khatauni bearing no. 24/23 min of Village Kirari Suleman Nagar, Delhi.”

2. The background facts are that the land in question i.e. 57 *Bighas* 15 *Biswas* comprised in Khasra Nos. 4//10(4-16), 5//6(4-10), 9//7(4-16), 9//16MIN (3-07), 9//25(3-14), 17//5(4-6), 21//22(4-16), 36//24(4-16), 37//2(4-12), 37//3/1(2-00), 41//4(4-16), 41//7(4-16), 41//8(4-16), 41//13/3/1(1-14) situated in Kirari Suleman Nagar, Patti Nithari, Delhi was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 23rd March, 2003 for the public purpose of the “Rohini Residential Scheme”. This was followed by a declaration under Section 6 dated 13th August, 2004. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 25/2005-06 on 6th February, 2006.

3. As regards the ownership of the subject land, it is averred in the petition that the Petitioner’s grandfather had a 1/6th undivided share in 200 *Bighas* 16 *Biswas* in Kirari Suleman Nagar, Patti Nithari, Delhi, which included the subject land. It is stated that the land was the subject matter of partition proceedings, which travelled to the Supreme Court. It is stated that a compromise was reached before the Supreme Court in C.A. 7040/2000,

wherein the individual shares of the Petitioner and Respondent Nos. 5 to 11 were set out.

4. It is stated in the petition that symbolic possession of the 25 *Bighas* and 9 *Biswas* of the subject land, comprised in Khasra No. 4/10(4-16), 5/6(4-10), 9/7(4-16), 16 min (3-07), 25(3-14) and 17/5(4-6) was taken on 13th October, 2006. It is stated that possession of the remaining land was not taken as it was 'built up'. It is stated that "symbolic possession" was transferred by the Respondent No. 2 to Respondent No. 3 the very same day.

5. On 6th December, 2012 the Petitioner filed a written submission before the LAC, "claiming his share in the entire land presuming the same as non-partitioned". The Financial Commissioner on 19th January, 2007 dismissed the "revision petition filed against the order partitioning the holdings" and decided that the shares were to be decided based on the compromise reached before the Supreme Court.

6. Based on this order, the LAC prepared a corrigendum dated 28th March, 2007 as per which, the Petitioner's share was noted as '4-9.3/40 *Bighas Biswas*'. The objections to the corrigendum by Respondent Nos. 7 and 8 were dismissed by the LAC by an order dated 4th April, 2007.

7. Aggrieved by the orders of the LAC, dated 28th March, 2007 and 4th April, 2007, the Petitioner filed a writ petition before this Court being W.P.(C) 5078/2007 (*Jaipal v. Govt. of NCT of Delhi*), which came to be dismissed. It is stated that the Civil Appeal No. 8219/2009 preferred against

the judgment of this Court was dismissed by the Supreme Court by order dated 7th October, 2010.

8. The Petitioner states the LAC “after considerable period of time” made a reference to the Court of the ADJ under LAA Sections 30/31 for 25 *Bighas* 15 *Biswas*. A copy of the order of the ADJ dated 26th February, 2013 has been annexed with the petition. It is stated that the review filed by the Petitioner against the aforesaid order was also dismissed by an order dated 28th May, 2015.

9. It is further averred that the corrigendum dated 28th March, 2007 has attained finality and is “binding on all parties”. It is then stated that as five years have passed since the issue of the corrigendum and compensation has not been paid and merely symbolic possession has been taken of the land measuring 25 *Bighas* 9 *Biswas*, the Award can be said to have lapsed under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘2013 Act’).

10. Counter affidavits have been filed on behalf of the LAC and Respondent Nos. 5 to 7. In the counter affidavit of the LAC, it is pointed out that the petition is silent on how the Petitioner has determined the share of the land in respect of which he claims to be entitled to relief. It is stated that “actual vacant physical possession” of 25 *Bighas* 15 *Biswas* was taken on 13th October, 2006 and was handed over to the DDA. It is stated that possession of 32 *Bighas* could not be taken.

11. It is stated that the co-owners of the subject land, Dilbagh, Gulab Singh and Mahender Singh moved applications, seeking compensation as per the shares determined by the LAC, upon which a report dated 28th March, 2007 was prepared. It is averred that compensation Rs.30,04,655/- to each of the aforesaid recorded owners was released on 4th April, 2007 by way of cheque Nos. 921980 and 921982.

12. It is pointed out that the Petitioner preferred a petition seeking review of the order dated 24th March, 2007, which was rejected by the LAC by an order dated 4th April, 2007. The Petitioner raised a dispute in respect of 33 *Bighas* which belonged to one Smt. Bhagwani and that the LAC by an order dated 26th February, 2013 observed that part compensation, in respect of 25 *Bighas* 15 *Bighas* has already been paid to the co-owners and referred the matter to the Court of the ADJ under Section 30/31 of the LAA. It is stated that due to “insufficiency of funds” the LAC was unable to remit the remainder of the compensation to the Reference Court.

13. It is stated that out of the 33 *Bighas*, in respect of which a dispute was raised, the Petitioner’s share was determined to approximately be 5 *Bighas* 14 *Biswas* by the order dated 24th March, 2007. It is stated that the particular Khasra Nos. denoting the aforesaid share of the Petitioner has not been determined yet as the “whole land remains undivided till date”. Accordingly, it is stated that the LAC is not in position to indicate exactly whether possession of the Petitioner’s land has been taken or not.

14. In the counter affidavit filed on behalf of Respondent Nos. 5 to 7, it is stated that the petition is barred by gross delay and laches. It is claimed that Respondents 5 to 7 are the recorded owners of the subject land and that, therefore, the petition is not maintainable. It is averred that the Petitioner is only entitled to compensation as per the compromise arrived at before the Supreme Court. It is submitted that the entirety of the subject land has been sold to number of persons and that 32 *Bighas 6 Biswas* “has become part of an unauthorized colony”. It is averred that neither the Petitioner nor the instant Respondents dispute the possession of 32 *Bighas 6 Biswas* of the subject land. It is averred that one Shri Ranbir Singh, and not the Petitioner, is in “actual possession and occupation of the land in question”.

15. It is also pointed out that the Petitioner’s share has already been determined and the compensation in respect of the same has been deposited in the Court of the ADJ. It is averred that out of the totality of the subject land, 24 *Bighas 15 Biswas* was not part of any litigation and belonged to the instant Respondents.

16. No rejoinder has been filed by the Petitioner to any of the aforementioned counter affidavits. Be that as it may, the position that emerges from the averments in the petition and the counter affidavits is that there is nothing placed on record to substantiate the Petitioner’s right, title or ownership over the entirety of the subject land. Further, the Petitioner has not filed a rejoinder to contradict the claim of Respondents 5 to 7 that they are the recorded owners in terms of the compromise reached between the parties and that on the subject land there is at present an unauthorised

colony. Therefore both aspects of possession and entitlement to compensation give rise to disputed questions of fact which cannot be examined in the present proceedings.

17. Another aspect of the matter is that a perusal of the impugned Award pertaining to the subject land makes it clear that the land was acquired for the purpose of the Rohini Residential Scheme. If in terms of the impugned Award, the land was acquired for public purposes of the Rohini Residential Scheme, then by virtue of the order dated 18th October 2016 of the Supreme Court of India in SLP (C) Nos. 16385-16388 of 2012 (***Rahul Gupta v. DDA***) even if on the date of the said order of the Supreme Court, actual physical possession was not with the DDA, if such physical possession was not handed over to the DDA within ten days thereafter, the DDA would be deemed to be in possession of the lands in question. Therefore, even on the Petitioner's own showing, the factual position regarding possession is not clear.

18. If, as pointed out by Respondents 5 to 7, without being contradicted by the Petitioner, that there is at present on the subject land an unauthorised colony that too would disentitle the Petitioner to relief under Section 24 (2) of the 2013 Act. The legal position in this regard has been explained by this Court in ***Mool Chand v. Union of India 2019 (173) DRJ 595 DB***.

19. Lastly, there is no explanation in the petition for the inordinate delay in the Petitioner approaching this Court for relief. On the aspect of laches, a

three Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 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 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.”

20. For the aforementioned reasons, the writ petition is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 07, 2019

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