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

+ **W.P.(C) 12049/2015**

COL. JAI PRAKASH

..... Petitioner

Through: Mr. N. Prabhakar, Advocate

versus

THE HON'BLE LT. GOVERNOR & ORS.

..... Respondents

Through: Mr. Pawan Mathur for DDA
Mr. Yeeshu Jain, Standing Counsel
and Ms. Jyoti Tyagi for L&B/LAC

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

ORDER
13.03.2019

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1. The prayers in the petition read as under:

“a. Issue a writ in the nature of certiorari/declaratory writ quashing the acquisition proceedings culminating in the award number 164/86-87 dated 19.09.1986 under the erstwhile Land Acquisition Act 1894 qua his undivided share in the agricultural land measuring 4 Bigha 8 Biswas out of the total land measuring 5 Bigha and 17 Biswas in the khasra numbers 30/16 and 30/17/01 in the village Matiala, Tehsil Rampura, New Delhi and declaring the acquisition of the aforesaid land as having lapsed in terms of the section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation and Resettlement) Act 2013;

b. issue a writ of mandamus/in the nature of mandamus or any suitable directions to the respondents to issue a fresh notification for acquisition of the aforesaid land in accordance with the provisions contained in the Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation and

Resettlement) Act 2013 and awarding compensation in terms thereof.

c. issue a writ of mandamus/in the nature of mandamus or any suitable directions to restore the actual physical possession of the subject land in favour of the petitioner in the alternative;

d. pass any other order/suitable directions as this Honorable court deems just and appropriate in the facts and circumstances of the case.”

2. The narration in the petition reveals that in respect of the lands in question a notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 27th January 1984, followed by declaration under Section 6 of the LAA on 24th September 1984. The impugned Award No. 164/86-87 was passed on 19th September 1986. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the counter-affidavit filed on behalf of the LAC, it is submitted that the possession of the lands in Khasra No.30//16 and 30//17/1 was taken and handed over to the DDA on 17th June 1992. It is also submitted that the Petitioner has not filed any revenue nor any title documents to support the contention that the Petitioner or his predecessors-in-interest were ever the recorded owners of the land. It is pointed out that the Petitioner is claiming his right through a General Power of Attorney (GPA). On the aspect of compensation, it is stated in para 9 of the counter-affidavit that “payment of majority of compensation to the recorded owners has been made”

4. In the counter-affidavit filed by the DDA, it is submitted that the petition is barred by delay and laches. It is further submitted that as per the land

records, the land bearing Khasra No. 30//16(3-08),30//17/1 (2-09) was acquired by the LAC on 9th October 1986 and handed over to the DDA. The DDA further transferred the subject land to the Engineering Department for further development of Dwarka Residential Scheme on 30th January 2009. On the aspect of compensation it is stated that:

“It is further submitted that as per the record of the answering respondent towards compensation against Award No.164/1986-87 was already sent to Land & Building Department, Govt. of NCT of Delhi of Rs. 100 crore by the Government as special loan compensation of 13 villages of South Delhi, Rs.78 crores is lying in the revenue deposit account with ADM(LA) which proposed to be utilized for Pappan Kalan Project known as Dwarka Residential Scheme.”

5. No rejoinder has been filed by the Petitioner to the counter affidavit of the LAC or the DDA. In any event, the even the Petitioner appears to concede in para 5 of the writ petition that the Respondents have taken possession of the lands in question. It is averred that “The possession was totally illegal and unlawful as the respondents had resorted to brute force while taking the possession of the aforesaid khasras. The possession of the land, as aforesaid, was handed over to the respondent number 3”, i.e. the DDA. The further assertion that no compensation was tendered, having been disputed by the Respondents, gives rise to disputed questions of fact which cannot be examined in these proceedings.

6. Mr. Prabhakar, learned counsel for the Petitioner, referred to the averments in para 7 (A) to (E) of the petition about the land to the extent of 5 bighas and 17 Biswas being part of the Development Area No. 171 in which the village Matiala was located; about the said land being denotified on 16th

January 2001 by a Gazette notification and thereafter the Petitioner purchasing land to the extent of 4 bighas and 8 biswas from the GPA holder of the original owner. However, the documents enclosed by the Petitioner as far as his claim is concerned are an agreement to sell and another GPA which *prima facie* are not valid documents of title. The above averments appear to validate the case of the LAC that “The petitioner is claiming the rights through Agreement to Sell/GPA and filed the writ petition in his own name and not in the name of the recorded owner namely Risal Singh.” The Petitioner not having filed a rejoinder has thus failed to even *prima facie* establish his *locus standi* to claim compensation. 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 was 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.”

9. The above observations have been followed by this Court in several orders including *Mool Chand v. Union of India 2019 (173) DRJ 595[DB]* and similar petitions have been dismissed on the ground of laches.

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.

MARCH 13, 2019

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