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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 12068/2015 and C.M. No. 32034/2015 (stay)

NARINDAR LAL ANAND

.... Petitioner

Through: Petitioner in person

versus

GOVERNMENT OF NCT OF DELHI & ORS.

.... Respondents

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

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

07.08.2019

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1. At the outset, Mr. Akhil Sachar, learned counsel appearing for the Petitioner sought discharge stating that the Petitioner would like to present the case himself. Accordingly, Mr. Sachar was discharged as counsel.

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

“a. issue a writ of certiorari and/or a writ, order or direction in the nature of certiorari calling for the records of the case and after examining the legality and validity of the Notification dated 28.4.1995 being Notification No. F.11(17)/91/L&B/LA/6518 issued under Section 4 of the Land Acquisition Act, 1894 issued in respect of the land forming part of Village Shahbad Daulatpur quash and set aside the same;

b. issue a writ of certiorari and/or a writ, order or direction in the nature of certiorari calling for the records of the case and after examining the legality and validity of the declaration dated 26.4.1996 being No. F.10 (29)/96/L&B/LA/20 under Section 6 of the Land Acquisition Act, 1894 quash and set aside the same;

c. issue a writ of certiorari and/or a writ, order or direction in the nature of certiorari calling for the records of the case and after examining the legality and validity of the declaration dated 26.4.2013 being F.11(17)/91/L&B/LA/1285 under Section 6 of the Land Acquisition Act, 1894 quash and set aside the same;

d. issue a writ of certiorari and/or a writ, order or direction in the nature of certiorari calling for the records of the case and after examining the legality and validity of the Award No. 1/98-99 dated 24.4.1998 quash and set aside the same;

e. issue a writ, order or direction in the nature of mandamus calling for the records of the case and after examining the legality and validity of the same direct the Respondents not to interfere/dispossess the Petitioners from their land forming part of Khasra Numbers as indicated in the Schedule-A;

f. issue a declaration that the acquisition proceedings with respect to the land of the Petitioner as indicated in Schedule-A be deemed to have lapsed.”

3. The background facts are that the land in question i.e. Khasra No. 195 (‘subject land’) admeasuring 1 *Bigha* 1 *Biswa* situated in the Revenue Estate of Village Shahabad Daulatpur, New Delhi was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 28th April, 1995 for the public purpose of “Rohini Residential Scheme”. The notification contained a direction under

Sections 17 (1) and (4) of the LAA that the provisions of Section 5A of the LAA would not apply to the proceedings initiated thereby. This was followed by declarations under Section 6 and 7 of the LAA dated 26th April, 1996, the latter directing the Land Acquisition Collector ('LAC') to make orders of acquisition of the subject land and take possession thereof. Thereafter, an Award No. 1/98-99 ('the Award') dated 24th April 1998 was made under Section 11 of the LAA.

4. The Petitioner states that he purchased the subject land by way of registered sale deed dated 29th January 1988, a copy of which is annexed to the petition. The Petitioner states that he is in settled and undisturbed possession of the subject land, in support of which he has annexed to the petition notifications dated 23rd February, 2015 issued under Sections 9 and 10 of the LAA and photographs purportedly signifying the Petitioner's physical possession of the subject land. The Petitioner states that the declaration under Section 6 of the LAA dated 26th April, 1996 has been withdrawn, and that the fresh declaration issued on 26th April, 2013 under Section 6 LAA is time barred by virtue of the Supreme Court's judgment in *Padmasundara Rao v. State of Tamil Nadu (2002) 3 SCC 533*.

5. The Petitioner further states that Development Area No. 175, where the subject land is allegedly situated, was de-notified by the Lieutenant Governor in exercise of his powers under Section 12 (1) of the Delhi Development Act,

1957 on 16th March, 2011. The Petitioners states that he was awarded a “meager” compensation of Rs.2, 87,175 /- on 3rd December, 1998.

6. It is stated by the Petitioner that the declaration dated 26th April, 1996 has been quashed by the Supreme Court in its judgment dated 21st March 2012 in S.L.P.(C.) 12552-53 (***Prahlad Vihar Association v. Union of India***) with respect to the appellants therein. The declaration dated 26th April, 1996 was quashed and the Competent Authority was permitted to issue fresh notices under Section 5 of the LAA inviting objections pursuant to the Section 4 LAA notification dated 28th April 1995. The Petitioners then states that a Division Bench (DB) of this Court by judgment dated 21st February 2015 in W.P. (C) No. 3103 of 2014 (***Prahlad Vihar Residents Welfare Association v. State***) quashed the declaration dated 26th April 2013 insofar as the Petitioners therein were concerned. It is further contended that accordingly, the notification dated 28th April 1995 issued under Section 4 of the LAA should be regarded as having lapsed.

7. Counter-affidavits have been filed on behalf of the Delhi Development Authority (‘DDA’), and the Land & Building Department (‘L&B’) and LAC. In the counter-affidavit of the DDA, it is stated that the writ petition was liable to be dismissed as being premature in its invocation of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘2013 Act’). It is averred by the DDA that the notification dated 28th April, 1995 cannot be quashed on any

ground. It is further averred that the declaration dated 26th April, 1996, on the Petitioner's own showing, has already been set aside. However, the effect of the setting aside of the aforesaid declaration is that the acquisition proceedings stand relegated to the stage of the issuance of the notification under Section 4 of the LAA on the date of the order quashing the aforesaid declaration. It is contended therefore that the Award cannot be quashed on any ground.

8. The DDA states that the Petitioner has placed nothing on record to show that he is the recorded owner of the subject land. It is further averred by the DDA that the possession of the subject land was taken over by the LAC through Possession Proceedings dated 13th January, 1997. It is also averred by the DDA that the Petitioner, on his own showing, has accepted the Award with regard to the subject land. Therefore, it is averred that the Petitioner cannot challenge the Award in the instant writ petition.

9. The DDA further states that a sum of Rs.1,30,80,17,600/- was remitted to the L&B through Cheque No. 086821 dated 24th March, 2003 on account of compensation for land covered by the Award. It is pointed out by the DDA that the de-notification of Development Area No. 175 issued by the Lieutenant Governor on 16th March, 2011 does not signify that the aforesaid area is no longer required for the alleged public purpose. The DDA also points out that the Petitioner has placed nothing on record to show that the subject land falls within the de-notified Development Area No. 175. The DDA contends that the declaration issued on 26th April, 2013 is not barred by virtue of the Supreme

Court's judgment in *Padmasundara Rao v. State of Tamil Nadu (2002) 3 SCC 533*. It is submitted that the writ petition is liable to be dismissed on the ground of delays and laches.

10. In the counter-affidavit of the L&B and LAC, it is averred that the Petitioner is the recorded owner of the subject land. It is further averred that "physical possession of Khasra No. 195 comprising of 6 *Bighas* and 6 *Biswas* out of which 195 min (6-5) had been taken by the Government on 13.01.97 and Khasra No. 195 (0-01) could not be taken due to built up area, which was handed over to DDA for the purpose of development of Rohini Residential Scheme." It is also averred that compensation of a sum of Rs.2,84,862/- was tendered to the Petitioner on 4th September, 1998.

11. Rejoinders have been filed by the Petitioner in response to the counter-affidavits of the DDA, and the L&B and LAC. In the rejoinders, the Petitioner has reiterated his averments in the writ petition. He disputes that physical possession of the subject land was handed over to the DDA on 13th January 1997 itself.

12. As far as compensation is concerned not only does he admit to receiving Rs.2,87,175/- as compensation but states that he "is ready and willing to refund the compensation along with reasonable interest." He now claims, but clearly as an afterthought, that the aforementioned compensation was received under protest. The Petitioner was admittedly paid the above compensation way back

on 3rd December 1998. As against the sum of Rs.20,000/- for which he purchased the subject land on 29th January 1988, he was paid within ten years thereafter a sum of Rs.2,87,175/- for the acquisition of the said. He never ever wrote to the authorities at any time, much less soon thereafter, that he had received the said sum under protest. He now terms the said amount as ‘meager’

13. As regards possession, it emerges, from a perusal of the averments in the writ petition and the counter-affidavits filed by the DDA, and the L&B and LAC that the subject land was acquired for the purpose of the Rohini Residential Scheme. If in terms of the 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 possession cannot be said to be with them.

14. In the circumstances, the Petitioner’s invocation of Section 24 (2) of the 2013 Act to pray for a declaration of deemed lapsing of land acquisition proceedings is misconceived. It must be recalled that Mr. Anand accepted full compensation for the subject land way back in December 1998 and never challenged the acquisition. He was not party to any of the cases which raised

such challenge. He has woken up and filed this petition in December 2015 only because he received notices under Section 9 and 10 LAA pursuant to the subject land being included in the Section 6 LAA dated 26th April 2013. In such circumstances, it would be an abuse of the process of law to permit such relief, as has been held by a 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 negated 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.”

15. As regards the reliance placed by Mr. Anand on the decision of this Court in *Prahlad Vihar Residents Welfare Association v. State (supra)*, as already noticed he himself was not party to the said litigation. He, therefore, cannot take advantage of the above decision of the DB. In his case, for the reasons explained hereinbefore it is not possible to declare the acquisition of the subject land as invalid, when admittedly compensation was received in full without protest more than two decades ago and physical possession of the land is no longer with the Petitioner by operation of the law explained by the Supreme Court in *Rahul Gupta v. DDA (supra)*.

16. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 22nd December, 2015 is hereby vacated and C.M. No. 32034/2015 is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 07, 2019

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