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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 10286/2020

JAMILA

..... Petitioner

Through: Mr. Tauseef Khan, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. P.S. Singh, Sr. Panel Counsel
for UOI . Mr.
Arun Birbal, Adv. for DDA.
Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. For R-
3&4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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24.12.2020

[VIA VIDEO CONFERENCING]

CM No. 32548/2020 (for exemption).

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The petitioner seeks mandamus, directing the respondents (i) Union of India (UOI) through the Ministry of Rehabilitation; (ii) Delhi Development Authority (DDA); (iii) Land and Building Department, Delhi Administration; and, (iv) Land Acquisition Collector (LAC) (South), Delhi, to pay fair compensation amount under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RTFCA) and in the alternative, declaration that the

acquisition proceedings initiated under the Land Acquisition Act, 1894 and in respect of which Offer No.1027A/9th November, 1962 was made, *inter alia*, in respect of the petitioner's land (i) *admeasuring* 5 bigha 12 biswa in Khasra No.82; (ii) *admeasuring* 1 bigha 19 biswa in Khasra No.183; (iii) *admeasuring* 5 bigha 14 biswa in Khasra No.225; (iv) *admeasuring* 4 bigha 4 biswa in Khasra No.591/59; (v) *admeasuring* 4 bigha 4 biswa in Khasra No.592/59, in patti Hamid Sarai and patti Hauz Rani situated in the Revenue Estate of Village Hauz Rani, Tehsil Hauz Khas, New Delhi – 110016, to the extent of her respective share, shall be deemed to have lapsed.

4. The counsel for the respondent DDA and the counsel for the respondent LAC appear on advance notice and contend that the petition is liable to be dismissed summarily. In the circumstances, the counsels have been heard finally, today itself.

5. It is the case of the petitioner, that (i) the petitioner is one of the legal heirs of late Abdul Khalik s/o late Chahat s/o late Mauji who was the joint owner of the aforesaid land; (ii) Abdul Khalik, being the husband of the petitioner, died on 8th November, 2011 and on his demise the said property devolved upon his legal heirs including the petitioner; (iii) Abdul Khalik, husband of the petitioner, was a successor of Chahat s/o Mauji, who died on 7th October, 2004; (iv) the land aforesaid was mutated in the revenue records in the name of Chahat; (v) as per Muslim Law governing the petitioner, the petitioner is entitled to 1/8th share of the compensation for which her husband Abdul Khalik s/o Chahat was entitled for the aforesaid land; (vi) a Notification bearing no.F.1(172)/48/LSG(11) dated 13th September, 1948 under Section 3 of the Re-settlement of Displaced Persons (Land Acquisition) Act, 1948 was issued for the purpose of re-settlement of
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displaced persons from West Pakistan in South Delhi; (vii) in accordance with the said Notification, the then LAC vide Offer No.1027 made an offer to the land owners of the notified land; (viii) the rates offered by the LAC were not accepted by the land owners; (ix) no further action was taken save for sending only two cases to the concerned arbitrator; (x) on 9th November, 1962, the Ministry of Rehabilitation offered a sum of Rs.400/- vide Offer No.1027-A as compensation to settle the pending cases with the land owners but the same was neither tendered nor paid to the petitioner with respect to the aforesaid land; (xi) no notice/letter even was served on the petitioner; (xii) the petitioner has not compromised the matter; (xiii) thus, the situation of the land is the same as it was on 13th September, 1948; (xiv) the petitioner wanted to execute a will with respect to her aforesaid property and asked her children to collect the documents in this regard; (xv) it was then, that the petitioner, on 23rd October, 2020 came to know that her title got divested and a Notification dated 22nd January, 1979 was passed under Section 22(1) of the Delhi Development Act, 1957; (xvi) vide the said Notification, vast areas of the land were placed at the disposal of the DDA including the land aforesaid of the petitioner; (xvii) inspite of such acquisition, neither the husband of the petitioner nor the petitioner has been compensated till now; (xviii) the petitioner made a representation dated 7th November, 2020 to the respondents for the payment of compensation in terms of Section 24(2) of the RTFCA (xix) inspite of representations, no compensation has been paid; (xx) the petitioner is entitled to have her land released, as the process of acquisition under the Land Acquisition Act, 1894 initiated, lapsed; (xxi) the petitioner, along with other owners has a right to enjoy the land; (xxii) neither physical possession of the land has ever been taken by the

respondents nor any compensation been paid to the petitioner; and, (xxiii) all the ingredients necessary for applicability of Section 24(2) of the RTFCA are satisfied.

6. The counsels for the respondents contend that as obvious from the narration in the petition itself, the Notification for acquisition of the land was issued under the Land Acquisition Act, as far back as in the year 1948 and, compensation with respect thereto determined/offered as far back as in the year 1962 and the petition is highly belated and stale. They have also drawn attention to:-

- A. Para 362 of *Indore Development Authority Vs. Manoharlal* (2020) 8 SCC 129 holding that Section 24 of the RTFCA cannot be used to revive dead and stale claims and concluded cases and the provision of Section 24 does not invalidate the judgments and orders of the Court where rights and claims have been lost and negated. It is further contended that it was also held therein that there is no revival of the barred claims by operation of law and stale and dead claims cannot be permitted to be canvassed on the pretext of the enactment of Section 24.
- B. Order dated 21st January, 2019 in W.P.(C) No.11722/2015 titled *Mohd. Saddiqe Vs. Union of India*. The said petition was filed, claiming the relief of declaration that the acquisition with respect to land in the revenue estate of village Patti Hamid Sarai had lapsed and to restrain the respondents from interfering with the peaceful possession of the petitioner therein, of enjoyment of the land subject matter thereof. Noticing that the notification under Section 3 of the

Resettlement of the Displaced Persons (Land Acquisition) Act, was of as far back as on 13th September, 1948 and that the offer vide Offer No.1027 was made in 1948 itself and finding no explanation for inordinate delay in approaching the Court, the petition was dismissed.

C. Order dated 6th August, 2019 in W.P.(C) No.7044/2016 titled ***Waseela Begum Vs. Union of India***. The said petition also was filed seeking setting aside of the Award No.1027-A dated 9th November, 1962 passed under the Land Acquisition Act in respect of land in Village Hauz Rani, Delhi and to restrain the respondents from interfering with the petitioner's possession of the land. Again, noticing that the Notification was of 13th September, 1948 and Offer No.1027-A was made on 9th November, 1962, it was held that:-

- (i) the assertion of the petitioner therein that she continued to remain in possession of the land and had not been paid compensation for the same, gave rise to disputed questions of fact, which could not be examined in a writ petition.
- (ii) the petition was barred by delay and laches in as much as relief was sought with respect to acquisition proceedings initiated way back in 1948 and where possession of the land was handed over to the DDA as far back as in 1979.
- (iii) Section 24 (2) of the RTFCA would not apply to such acquisition proceedings initiated and completed under the Resettlement of Displaced Persons (Land Acquisition) Act.

7. Per contra, the counsel for the petitioner has drawn attention to order dated 11th March, 2004 of this Court in W.P.(C) No.3273/1987 titled **Varun Kumar Dutt Vs. Union of India** and has contended that the challenge therein was to the same notification and this Court had de-notified the land. It is further contended that the respondents herein, notwithstanding the representation dated 7th November, 2020 of the petitioner, have not given any response thereto and adverse inference had to be drawn against the respondents. The judgment of the Supreme Court in **Delhi Development Authority Vs. Sukhbir Singh** 2016 (16) SCC 258 has also been cited on the interpretation of Section 24(2) of the RTFCA, holding that the State has no business to expropriate from a citizen his property, if an award has not been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. Furthermore, the judgment of the Supreme Court in **B.K. Ravichandra Vs. Union of India** 2020 SCC OnLine SC 950 has been cited, wherein a direction for the handover of possession by the respondent Union of a requisitioned property was issued after the lapse of the Requisitioning and Acquisition of Immovable Properties Act, 1952, after 33 years.

8. We have considered the rival contentions.

9. The orders in **Mohd. Saddiqe** supra and **Waseela Begum** supra relied upon by the counsel for the respondents, apply to the present petition on all fours. We do not find **Varun Kumar Dutt** supra relied upon by the petitioner to be with respect to the same notification as also contended by the counsel for the respondents. The petition therein was with respect to land in village Sheikh Sarai, New Delhi. Moreover, the petitioner forgets that the

petition subject matter of *Varun Kumar Dutt* supra was filed as far back as in 1987, though decided on 11th March, 2004.

10. In the present case, the acquisition according to the petitioner also, is of as far back as 1948/1962 i.e. of 72/58 years prior hereto. According to the petitioner also, at the time of acquisition, Mauji was the owner of the said land. The petitioner is the wife of Abdul Khalik who died on 8th November, 2011 and who in turn was the son of Chahat who died in the year 2004. The date of demise of Mauji has not been pleaded. The case built by the petitioner is, of the respondents having not paid the compensation to the petitioner. However, the petitioner forgets that at the time of acquisition, the compensation, according to the petitioner also, was payable to Mauji and after the demise of Mauji, to Chahat and after the demise of Chahat in 2004, to his son Abdul Khalik. We have thus asked the counsel for the petitioner, whether Mauji or Chahat or Abdul Khalik, during their lifetimes, received any compensation.

11. The counsel for the petitioner states that the petitioner is very old and has no information.

12. The petitioner, removed by two/three generations, from the owner of the land at the time of acquisition, without even knowing what transpired at the time of acquisition, is not entitled to approach this Court claiming that she does not know anything and the Court should find out for her, whether compensation for the land admittedly acquired, was paid to any of the generations before her. The petitioner thereby seeks to shift the burden on the respondents. It cannot be lost sight of, that the respondents also cannot be expected to prove after such long lapse of time, that compensation was

paid and/or possession taken and if failed to do so will run the risk of losing the land even if validly acquired and required for public works. The presumption of an official act having been validly done and concluded, will arise.

13. Merit is thus, found in the contention of the counsels for the respondents, of the petition being stale and agitating a dead claim.

14. No ground for entertaining the petition is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 24, 2020

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