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

Date of Decision: 04.02.2020

+ W.P.(C) 5843/2018 & C.M. No. 3282/2020

NAUNIHAL SINGH KAKKAR

..... Petitioner

Through: Mr.Pradeep Kr.Shukla, Advocate

versus

LAND & BUILDING DEPARTMENT & ORS Respondents

Through: Mr.Rajneesh Sharma, Advocate for
Respondent No.1.

Mr.Mohit Agarwal, Advocate for
Respondents No.2 and 3

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (Oral):

1. We have heard learned counsel for the parties and proceed to dispose of the writ petition.

2. The Petitioner has filed the present petition under Article 226 of the Constitution of India, seeking declaration to the effect that the acquisition proceedings with respect to his land comprised in Khasra no. 410/236 (1-12), Gram Begumpur, Tehsil- Mehrauli, Saket, New Delhi-110017 (hereinafter "the subject land") acquired vide notification No. F-1(72) 48, 11/6/59 dated 04.06.1959 and award No. 1000A dated 01.06.1962, are deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter as "the 2013 Act").

3. The prayers made in the present petition are as follows:

“(a) Issue a writ of Mandamus or any other suitable Order or Direction to the Respondent for return the acquire land of bearing Khasra no. 410/236 (1-12), gram Begumpur, Tehsil-Mehrauli, Saket, New Delhi-110017. In view of the provisions of Section 24(2) of Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(b) Kindly issued the direction to the resondent for pay the compensation of acquired land with interest. As per revenue record admissible under the law in view of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(c) Pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present petition.”

4. In brief, the case of the Petitioner is that the subject land was acquired for Sekh Sarai Development Scheme vide notification No. F-1(72) 48, 11/6/59 dated 04.06.1959 and an award No. 1000A dated 01.06.1962 was passed in that regard. Even though Petitioner is not the recorded owner, he claims co-ownership and title of the subject land, by virtue of a document described as an agreement to sell dated 22.08.1987, purportedly executed between the Petitioner and the erstwhile owner- Nazamuddin Ahmed Khan. In pursuance of the agreement to sell, it is contended that the possession of the subject land was taken over by the petitioner in 1987. Curiously, it is also proclaimed that petitioner's rights in the subject land have been reconfirmed by an additional agreement dated 30.08.2012 also executed with erstwhile owner- Nazamuddin Ahmed Khan.

5. Be that as it may, the Petitioner has invoked section 24(2) of 2013 Act and based its challenge to the acquisition proceedings on the ground that he continues to be in possession of the subject land till date and neither him nor the erstwhile recorded owner of the subject land has been paid compensation.

6. Learned counsel for respondent no.1 on the other hand submits that the acquisition of the subject land was the subject matter of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 and not under the Land Acquisition Act, 1894. He has relied upon the order of this court in ***Lashita Kumar and Ors. v. Govt of NCT of Delhi and Ors.*** bearing no. W.P.(C) 6501/2015 dated 11.12.2018 wherein this court has dismissed a similar writ petition holding that if the acquisition of land is subject matter of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948, the petitioner would be disentitled to the relief under the 2013 Act. He further submits that as per Section 105(1) of the 2013 Act, the provisions of the 2013 Act will not apply to the enactments relating to land acquisition specified in the Fourth Schedule of the 2013 Act. The Fourth Schedule of the 2013 Act includes the Resettlement of Displaced Persons (Land Acquisition) Act, 1948. On the above premise, it is argued that the petitioner is not entitled to invoke section 24(2) and seek the relief sought under the 2013 Act and the petition is misconceived and not maintainable.

7. We have given due consideration to the contentions of both the Learned counsels. It is evident from the factual narration in the petition that the Petitioner has claimed title over the subject land on basis of the agreement

dated 30.08.2012. Here, it would be apposite to note the decision of the Supreme Court in ***Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656***, wherein it has been held that a SA/GPA/Will transaction does not confer any title or interest in an immovable property. The relevant portion of the aforesaid decision reads as under:

“23. Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in Asha M. Jain v. Canara Bank [(2001) 94 DLT 841] , that the “concept of power-of-attorney sales has been recognised as a mode of transaction” when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the

pernicious practice of SA/GPA/will transactions known as GPA sales.”

8. Recently, the Supreme Court in ***Shiv Kumar v. Union of India, 2019 SCC OnLine SC 1339*** has considered the case of ***Suraj Lamp & Industries (P) Ltd (supra)*** in the context of right to invoke section 24(2) of the 2013 Act on the basis of the title documents such as Agreement to Sell, Will, GPA, etc. The relevant extract reads as follows:

" 25. Apart from that the claims have been made on transactions based on the power of attorneys, agreements, etc.; as such also they are not entitled to any indulgence and cannot invoke provisions of Section 24(2) of the 2013 Act. The Court has considered the question of the validity of transactions in the form of power of attorney in Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana [Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351] , and has held that no rights could be accrued on such transactions as this is not a legal mode of transfer. This Court has observed: (SCC pp. 666-68, paras 20-25)

"20. A power of attorney is not an instrument of transfer in regard to any right, title, or interest in an immovable property. The power of attorney is a creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In State of Rajasthan v. Basant Nahata [State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77] this Court held: (SCC pp. 90 & 101, paras 13 & 52)

‘13. A grant of power of attorney is essentially governed by

Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds, and things are done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act, 1882 is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with an interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject, of course, to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.'

An attorney-holder may, however, execute a deed of conveyance in the exercise of the power granted under a power of attorney and convey title on behalf of the grantor.

Scope of will

22. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing the distribution of his estate upon his death. It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the lifetime of the testator. It is said that so long as the testator is alive, a will is not be worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after

making the will, by operation of law, the will stands revoked. (See Sections 69 and 70 of the Succession Act, 1925.) Registration of a will does not make it any more effective.

Conclusion

23. Therefore, a SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court, in *Asha M. Jain v. Canara Bank* [*Asha M. Jain v. Canara Bank*, 2001 SCC OnLine Del 1157 : (2001) 94 DLT 841] that the “concept of power-of-attorney sales have been recognised as a mode of transaction” when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintended misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We, therefore, reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the Transfer of Property Act. **Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records.** What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.

25. It has been submitted that making declaration that GPA sales and SA/GPA/will transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions, and they should be given sufficient time to regularise the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship."

No right can be claimed based on a transfer made by way of execution of power of attorney, will, etc., as it does not create any interest in immovable property."

(emphasis supplied)

9. On a careful perusal of the petition, it emerges that no valid title documents have been annexed with the petition. The only documents placed on record are unregistered agreements dated 22.08.1987 and 30.08.2012 and some receipts. Petitioner's title, on the basis of the aforementioned documents, is shaky, flawed and legally unsustainable being contrary to the judgement of the Supreme Court in the case of ***Suraj Lamp & Industries (P) Ltd.*** (2) (supra). The unregistered, unstamped and vague documents, all subsequent to the acquisition proceedings, are suspect and do not confer any title nor create any interest in favour of the petitioner in view of the aforementioned decisions of the Supreme Court in ***Suraj Lamp & Industries (P) Ltd.*** (2) (supra) and ***Shiv Kumar*** (supra). Consequently, the Petitioner does not have right to seek the relief as sought in the present petition and the same is liable to be dismissed on this ground alone.

10. Furthermore, we also find merit in the objection of the Respondent that the Petitioner is not entitled invoke Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 as the acquisition proceedings in the present case are a subject matter of The Resettlement of Displaced Persons (Land Acquisition) Act, 1948. This fact in itself disentitles the Petitioner to seek the relief which he has sought under the section 24(2) of the 2013 Act.

11. Besides, the subject land was acquired vide notification No. F-1(72) 48, 11/6/59 dated 04.06.1959 and award No. 1000A dated 01.06.1962, whereas the present petition has been filed almost after six decades. The Petitioner has approached this Court without giving any explanation, whatsoever, for this inordinate delay. No purposeful explanation has also been tendered during the course of arguments to justify this belated filing. The petition is obviously barred by laches.

12. The Supreme Court has dealt with issue of delay and laches in ***Mahavir v. Union of India, (2018) 3 SCC 588***, in the context of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The said judgment is unambiguous in emphasising that claims where there is total inaction are not meant to be revived by the 2013 Act. The relevant observations of the Supreme Court in the said decision read as under:

“22. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, Section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under Section

31(1) in such cases would attract only interest as envisaged under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.

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.

26. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24(2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres

with the delay of more than 100 years. ”

(emphasis supplied)

13. The aforesaid Judgment has been considered by the Supreme Court in the decision of *Indore Development Authority v. Shailendra* reported at (2018) 3 SCC 412, relevant portion of which is reproduced hereunder:-

“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 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."

(emphasis supplied)

14. This Court has also dealt with the issue of delay and laches in the case of **Mool Chand v. Union of India** (W.P. (C) 4528/2015) dated 17th January 2019, wherein the Court while elaborating the decision of **Mahavir v. Union of India**, (2018) 3 SCC 588 and **Indore Development Authority v. Shailendra**, (2018) 3 SCC 412, on the aspect of delay and laches, made the following observations:

"34. The question then arises whether only the points of difference between the decisions in Pune Municipal Corporation (supra) and Indore Development Authority v. Shailendra (supra) and all issues incidental thereto have been referred to the Constitution Bench? In this context it requires to be noted that although several questions were framed in Indore Development Authority v. Shailendra (supra), it is only on Question I, viz., on whether the deposit in the RD Account

would amount to having tendered compensation for the purposes of Section 24 (2) of the 2013 Act, that there was a difference of opinion between the view expressed in the two decisions viz., *Pune Municipal Corporation (supra)* and *Indore Development Authority v. Shailendra (supra)*.

35. The other point of difference was that arising in *Yogesh Neema v. State of MP (supra)* where the correctness of the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra)* as regards exclusion of the period covered by the interim orders from the calculation of the period of five years under Section 24 (2) of the 2013 Act was questioned. On this point the three-Judge Bench in *Indore Development Authority v. Shailendra (supra)* unanimously overruled the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra)*. On this issue no subsequent Bench of the Supreme Court of co-ordinate strength appears to have taken a contrary view. It is doubtful, therefore, whether this issue would be examined by the Constitution Bench.

36. Relevant to the issue on hand, there was no difference of view qua Question III addressed in *Indore Development Authority v. Shailendra (supra)* i.e. “Whether section 24 of Act of 2013 revives barred and stale claims?” On this question there was no view (much less a contrary view) expressed in *Pune Municipal Corporation (supra)* or for that matter in any other subsequent decision of a smaller, co-ordinate or even larger Bench of the Supreme Court. This question, therefore, was not the subject matter of reference before the Constitution Bench.

37. Consequently, this Court is of the view that although the order passed by the Constitution Bench refers to “all the aspects” being considered by the Constitution Bench, that expression would not include questioning the correctness of the decision of the three-Judge Bench in *Indore Development Authority v. Shailendra (supra)* as far as it holds by a unanimous opinion that Section 24 (2) of the 2013 Act cannot

revive old and stale claims."

(emphasis supplied)

15. Similar orders have been passed in several other cases, such as in the case of *Sushma Purthi v. Union of India* (W.P. (C) 586 of 2016) dated 31st January 2019, *Krishan v. Union of India* (W.P. (C) 4919 of 2014) dated 25th January 2019, *Mohd. Mian v. Union of India* (W.P. (C) 2702/2019) dated 5th February 2019. The aforementioned cases have been dismissed by this court on the ground of delay and laches. Challenge against these judgments have been dismissed by the Supreme Court vide SLP (C) No. 11481/2019, SLP (C) No. 13423/2019 and SLP (C) No. 8848/2019, respectively.

16. The present petition is frivolous and misconceived for the reasons noted above and is accordingly dismissed on the ground of delay and laches as also on merits. Interim orders stand vacated. Pending application is also dismissed.

SANJEEV NARULA, J

VIPIN SANGHI, J

FEBRUARY 04, 2020

v