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

Date of Decision:- 06.02.2020

+ W.P.(C) 7156/2018

SANJAY GUPTA

..... Petitioner

Through: Ms. Kanika Goel and Mr. R. S. Dalal,
Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Anil Dabas and Mr. Praveen
Kumar, Advs. for R-1 & 2.

Mr. Prasanta Varma, Sr, Central
Government Counsel with Mr. Amrik
Singh Khalsa, Ms. Pratima V. Rani
and Ms. Hitesh Kakkar, Advs. for
UOI.

Mr. Yeeshu Jain, Adv. for LAC & L
& B with Ms. Indira Karki, Adv.

Ms. Mrinalini Sen, Standing counsel
with Ms. Shobhna Takia and
Ms.Niharika Jauhari, Advs.for DDA.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J (Oral):

1. 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 land of the petitioner admeasuring 1 bighas 2

biswa comprised in Khasra No.24/23 situated in revenue estate of Village Shahbad Daulatpur, Delhi (hereinafter “the subject land”), acquired vide Award bearing No.29/2002-03 dated 01.11.2002, 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”).

2. The reliefs sought by the petitioner read as follows:

“(I) Issue writ of DECLARATION and/or any other appropriate Writ, Order or Direction in the like nature declaring the impugned acquisition proceedings lapsed ,commenced vide notification under Section 4 of Act 1894 bearing notification No. F.IO (29)/96/L&B/LA/11394 Dated 27/10/1999 under Section 4 of LA Act, 1894; declaration under Section 6 of the Act bearing notification no. F 10(29)/92/L&B/LA/20 dated 03/04/2000 ,resulting in Award no. 29/2002-03 vis-a vis land admeasuring 1 bighas 2 biswa comprised in Khasra No.24/23 situated in revenue estate of Village Shahbad Daulatpur Delhi;

(II) Consequently issue writ of CERTIORARI quashing the impugned acquisition proceedings commenced vide notification No. . F.IO (29)/96/L & B /LA/11394 under Section 4 of LA Act, 1894; declaration under Section 6 of the Act bearing notification no. F10(29)/92/L&B/LA/20 dated 03/04/2000, resulting in Award no. 29/2002-03 vis-a-vis land admeasuring 1 Bighas 2 Biswas comprised in Khasra No.24/23 situated in revenue estate of Village Shahbad Daulatpur, Delhi;

(III) Issue MANDAMUS and/or any other Writ, Order or direction in the like nature commanding the respondents not to interfere with and/or obstruct the Petitioner in peaceful enjoyment of the subject land i.e. land admeasuring 1 bighas 2 biswas comprised in Khasra No.24/23 situated in revenue estate of Village Shahbad Daulatpur, Delhi;

(IV) Pass any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter 'the LAA') was issued on 27.10.1999 and the declaration under Section 6 of the LAA was issued on 03.04.2000 for the public purpose i.e. 'Rohini Development Scheme'. Subsequently, an Award no. 29/2002-03 dated 01.11.2002 was passed in respect of the subject land.

4. The challenge to the acquisition proceedings is on the surmise that the Petitioner has neither been paid compensation nor the possession of the subject land has been taken by the authorities.

5. Delhi Development Authority (DDA) - Respondent No. 3, in its counter affidavit, has challenged the maintainability of the present petition on the ground that the same is highly belated and is barred by excessive delay and laches and the land acquisition proceedings have become final. It has been stated that the subject land was acquired for the purpose of "Rohini Residential Scheme". Further, it is submitted that out of the total land area of 3 Bigha 3 Biswa comprised in Khasra No. 24/23, possession of 1 Bigha was handed over to the DDA, after carrying out demolition on 24.09.2002. The land admeasuring 1 Bigha was further transferred to RPD-I for the development of Rohini Residential Scheme on 24.09.2002. With regard to the compensation, payment of Rs. 280,80,17,600/- in respect of Award No. 29/2002-2003 was deposited with the Land & Building Department on 03.12.1999 and 24.03.2003.

6. It is the admitted position that the impugned acquisition was for the public purpose of “Rohini Residential Scheme”. The acquisition proceedings in the instant case are covered by the decision of the Supreme Court being SLP (Civil) Nos. 16385-88/2012 (***Rahul Gupta v. Delhi Development Authority & Ors***). A series of interim orders were passed by the Supreme Court in the abovenoted matter. In the last of such interim orders dated 18.10.2016, the specific direction issued by the Supreme Court was that “*We granted liberty to the Delhi Development Authority to produce a copy of this order in all matters, pertaining to land acquisition relating to the Rohini Residential Scheme, pending before the High Court, for vacation of similar interim directions.*”

7. It was further clarified by the Supreme Court as under:-

“It is made clear that in case the applicants have re-entered possession or otherwise, they shall vacate the said land and hand over its possession forthwith to the Delhi Development Authority, failing which it shall be assumed to be in possession of the Delhi Development Authority, after the expiry of ten days from the passing of the instant order.”

8. In view of the directions of the Supreme Court in ***Rahul Gupta*** (supra), the DDA is deemed to be in possession of the subject land. Thus, the contention of the Petitioner that he continues to remain in possession of the subject land is of no avail.

9. The Petitioner was queried about the delay in filing the present petition. However, no purposeful explanation has been tendered in the petition to

justify the inordinate delay in coming forward to challenge the present acquisition proceedings. The Award for the subject land was passed in 2002, whereas the present petition has been filed after about fifteen years. The petition is obviously barred by laches.

10. The Supreme Court has dealt with the issue of delay and laches in ***Mahavir v. Union of India, (2018) 3 SCC 588***, in the context of the 2013 Act. 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)

11. 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/negatived, 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)

12. 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)

13. 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.

14. Thus, in view of the foregoing discussion, the present petition is not maintainable on merits as well on the ground of delay and laches. Accordingly, the present petition is dismissed. Interim orders stand vacated.

SANJEEV NARULA, J

VIPIN SANGHI, J

FEBRUARY 06, 2020

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