

\$~Suppl.-11

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

+ W.P. (C) 11811/2019 & CM APPL. 48414/2019

NARESH KUMAR

.....Petitioner

Through: Mr.Anuj Dhir, Advocate.

Versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms.Jyoti Tyagi, Advocate for
L&B/LAC.

Ms.Nihaarika Jauhari, Advocate
for DDA.

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Date of Decision: 22nd March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed seeking a declaration that acquisition of petitioner's land admeasuring 1 bigha in Village Siraspur has lapsed.
2. Admittedly, Section 4 notification under Land Acquisition Act with regard to the land in question had been issued in 1989 and declaration under Section 6 of the said Act had been issued in 1990. Even the award with regard to the land in question had been passed in 1992.

3. Consequently, the present petition filed after a lapse of more than thirty years is barred by gross delay and laches.

4. However, in the present petition it has been averred that the petitioner could not approach this Court earlier as he was suffering from acute depression. The medical certificate of the Doctor based in Rohtak dated 09th November, 2019 has been enclosed with the present petition.

The said certificate reads as under:-

“It is certified that Mr.Naresh Kumar aged 59 years S/o Sh.Ram Dhan Mittal R/o B-39, Sawan Park, Ashok Vihar, Phase-3, Delhi was under my treatment for the last 30 years of the disease severe depression with obsessive compulsive disorder i.e. OCD (A type of mental illness). He is still under my treatment and he requires care by a responsible person of the family. He is still unable to do any work and activities. I had also given home visits many times during my treatment. There is also family history of such diseases in family. At present he is taking the following medicines.

- 1. Tab CLOMIPAMENE-25mg*
- 2. Clonazepam 1mg ITID 1-1-1*
- 3. TAB APROZEN 5mg*
- 4. TAB nitra zepatory*
- 5. Proprerial Semilelamy 40mg”*

5. Since the learned predecessor Division Bench of this Court was not satisfied with the explanation given for delay, it had passed an order dated 08th November, 2019 directing the petitioner to file a detailed affidavit disclosing all the material facts. The relevant portion of the order dated 08th November, 2019 is reproduced hereinbelow:-

“3. The Petitioner has preferred the present petition to assail the land acquisition undertaken vide notification under Section 4 of the Land Acquisition Act dated 09.02.1989. The notification under Section 6 of the Land Acquisition Act was issued on 07.02.1990 and the Award was passed 06.02.1992. To explain the delay, Petitioner

claims that he has been suffering from several diseases. The Petitioner has placed on record certain doctor's prescriptions which he claims to have been issued contemporaneously. The documents placed on record prima facie do not make out a case for condonation of delay. The Petitioner should establish that at all relevant times, he was suffering from such debilitating disease and that he could not possibly have filed the petition despite him wanting to do so. He should also disclose all the other family members in his family who have been taking care of him over the decades. Let an affidavit to the same effect be filed within a week with all original documents. No adjournment shall be granted on the next date."

6. The petitioner had thereafter filed an affidavit dated 18th November, 2019 stating that from 1988 the symptoms of depression started and in the year 1997, the health of the petitioner started deteriorating and since 2006, petitioner's in-laws had been taking care of petitioner and his family members.

7. It had further been averred that petitioner's eldest daughter had recently got married and her husband, who after the marriage started looking after the petitioner's affairs, advised filing of the present petition.

8. This Court finds it difficult to believe that petitioner was suffering from acute depression for last thirty years as he seemed to be leading a normal life as his third daughter was born in 1991 i.e. less than thirty years ago. Further, as the affidavit in question neither enclosed any contemporaneous medical record nor disclosed as to why his wife and/or his in-laws had not filed the writ petition earlier and/or as to why the petitioner was being treated by a doctor in Rohtak when he was residing in Delhi, this Court on 22nd February, 2021 passed the following order:-

“.....This Court is of the prima facie opinion that the petitioner cannot argue, as he is doing in the present writ petition, that it was his son-in-law who had advised him to file the present writ petition in this Court after thirty years. In fact, the learned predecessor Division Bench had specifically directed the petitioner to disclose the details of all other family members and as to why they had not taken any action for all these years. Consequently, this Court is of the opinion that the order dated 08th November, 2019 has not been complied with in its entirety.

This Court prima facie is also not satisfied with the medical records produced by the petitioner and even if, this Court does not entertain the present writ petition, it may be inclined to constitute a medical board to examine the petitioner to find out as to whether the petitioner has been suffering from depression to such an extent that for the last thirty years, he could not approach the Court.

At the request of learned counsel for the petitioner, adjourned to 09th March, 2021.....”

9. Learned counsel for the respondent/LAC states that there is no need to get the petitioner medically examined because even if it is presumed that the present petition is not barred by delay and laches, it would still be liable to be dismissed as the possession of land in question had been taken over on 26th February, 2003 and 18th September, 2004. In support of her submission, learned counsel for the respondent/LAC relies upon the Constitution Bench judgment in ***Indore Development Authority Vs. Manoharlal and Others, (2020) 8 SCC 129***, which has been pronounced after filing of the present writ petition.

10. Learned counsel for the petitioner admits that in view of the aforesaid Constitution Bench judgment, passed subsequent to the filing of the present writ petition, the relief prayed for cannot be granted. He, however, prays that respondents be directed to pay compensation to the

petitioner as he has a registered Sale Deed in his favour. In support of his prayer, he relies upon the order dated 12th July, 2019 passed in **W.P.(C) 5858/2016, Pushp Lata Jain and Anr. Vs. Union of India and Ors.** by the previous Division Bench of this Court.

11. However, learned counsel for respondent/LAC states that two other parties have filed their claim for compensation against acquisition of the land in question. She emphasises that the name of the petitioner has not been mutated in the land revenue records as the owner of the land in question.

12. Having heard learned counsel for the parties, this Court is of the view that the Constitution Bench of the Supreme Court in **Indore Development Authority** (supra) has held that acquisition of land will lapse only if two conditions are fulfilled cumulatively, i.e. (i) possession of land has not been taken over, and (ii) compensation amount has not been paid or deposited or tendered with the LAC. The relevant portion of the Constitution Bench judgment in **Indore Development Authority** (supra) is reproduced hereinbelow:-

“In re Issue 6 : Whether Section 24 revives stale and barred claim

340. Before proceeding further, in our opinion, Section 24 contemplates pending proceedings and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality of proceedings, which have been undertaken under the 1894 Act and stood concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial

provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the 2013 Act. The beneficiaries i.e. landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the 1894 Act. The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from the proviso to Section 24(2) and the decision in Shiv Kumar v. Union of India [Shiv Kumar v. Union of India, (2019) 10 SCC 229 : (2020) 1 SCC (Civ) 82 : (2019) 13 Scale 698].”

13. Since admittedly the possession of the land in question is with the respondent/LAC, this Court is of the opinion that the petitioner is not entitled to the relief prayed for.

14. This Court is further of the opinion that no relief with regard to compensation can be granted in present writ petition as petitioner's title has not been admitted by the respondent/LAC. Further, the Land Acquisition Act prescribes a special procedure to be adopted for claiming compensation where title of the parties is not admitted.

15. Consequently, present writ petition and application are dismissed with liberty to the petitioner to file appropriate proceedings to claim compensation in accordance with law. All the rights and contentions of the parties, including the plea of limitation, is left open.

MANMOHAN, J

ASHA MENON, J

MARCH 22, 2021
KA/rn/ck