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

Date of decision: 03.09.2021

+ W.P.(C) 266/2016
SHER SINGH

..... Petitioner

Through:

Mr. Ravinder Sethi, Sr. Adv. with
Mr. Aditya Vikram Bhardwaj,
Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through:

Mr. Chiranjeev Kumar, Mr.
Mukesh Sachdeva for R-1/UOI
Ms. Niharika Ahluwalia, Ms.
Sneha Kohli, Advs. for R-2
Ms. Jyoti Tyagi & Mr. Yeeshu
Jain, Advs. for R-3&R-4

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

03.09.2021

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VIPIN SANGHI, J. (ORAL)

CM APPL. No. 29613/2021

1. The petitioner has moved this application with the prayer that the order dated 15.07.2021 passed in present writ petition be recalled. By the order dated 15.07.2021, the writ petition was dismissed by this Court, on the ground that the same is covered by the judgement of the Constitution Bench of the Supreme Court in *Indore Development Authority Vs. Manoharlal* (2020) 8 SCC 129.
2. The submission of Mr. Sethi, learned senior counsel for the petitioner, is that the matter was listed on 15.07.2021 without any prior notice to the

petitioner. Consequently, the learned counsel for the petitioner could not appear when the matter was taken up and the dismissal of the petition has come about without hearing the petitioner. In view of the aforesaid grievance, we have permitted the learned senior counsel for the petitioner to advance the submissions on merits while hearing this application itself.

3. Mr. Sethi, learned senior counsel for the petitioner, submits that for hearing of the writ petition, it is necessary that the respondents produce the original possession taking record, since there is a serious dispute about the same. He has placed reliance on the order dated 13.11.2018 whereby the Court directed the respondents to produce the original record before the Court. This was because there was a heavy contest over, whether the translated version of the possession letter, which was annexed by the respondents as Annexure R2/1 with the affidavit filed by the DDA dated 06.01.2017, was an accurate translation of the original.
4. The further submission of Mr. Sethi, learned senior counsel, is that in the present case, the compensation has not been paid or tendered to the petitioners and an odd statement made by respondent no. 4 in its counter affidavit that the compensation assessed for the land in question, amounting to Rs. 21,984 was sent to the court of the ADJ on 26.06.1982 in respect of the 25 named persons, cannot be accepted.
5. The further submission of Mr. Sethi, learned senior counsel, is that despite the purported acquisition of the land in question, the actual physical possession has still not been taken and no development has been carried out. He further submits that, consequently, the stated acquisition should be considered as lapsed. He submits that there is no delay in filing the

present writ petition since the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 came into force and that gave fresh cause of action to the petitioner to assail the acquisition by placing reliance on Section 24(2).

6. On the other hand, Ms. Tyagi, learned counsel, appearing for respondent no. 4 has submitted that the acquisition of the land in question was initiated vide a notification u/s 4 of the Land Acquisition Act dated 13.11.1959. The notification u/s 6 of the said Act was issued on 02.01.1969 and possession of the land was taken over on 15.06.1982, followed by the award dated 18.11.1983. She points out that the petitioners had earlier preferred Writ Petition, CW No. 2325/81 which was dismissed on 20.03.1997.
7. Ms. Tyagi, learned counsel for the respondent, has further pointed out that the revenue record produced by the petitioner itself shows that the petitioner was never recorded as the Bhumidar of the land in question. The Khasra Girdawari produced by the Petitioner shows that they have only been shown as cultivators on rent, and the land itself has been shown as “Abadi Deh” –meaning thereby, that the land did not vest with the petitioner.
8. We are rather surprised that despite the petitioner’s earlier petition, challenging the acquisition proceedings, having being dismissed, the judgement of the Court has not been produced by the petitioner in the writ petition. In our view, this by itself constitutes suppression of material facts by the petitioner and non-suits the petitioner from pursuing these proceedings.

9. In any event, since the aforesaid submissions have been advanced by Mr. Sethi, we proceed to deal with them.
10. The insistence of Mr. Sethi, for production of the record leading to taking over of the possession of the land in question under the Land Acquisition Act, has no merit. Merely because the Division Bench had passed an order on earlier occasion requiring the respondent to produce record, it does not follow that we are obliged to call for, and look at the said record when we are finally hearing submissions
11. It is to be borne in mind that the acquisition proceedings started in the year 1959. The respondents have stated that they took over possession on 15.06.1982, and they have also produced the translated copy of the possession proceedings— which the petitioner disputes. After 40 years of the taking of the possession, in our view, it is not fair to even call upon the respondents to produce the possession proceedings. The concept of delay and laches in Writ proceedings, is founded upon the principle, that with the passage of time, it may not be possible for the authorities concerned to answer the allegations made in the writ petition. Moreover, there is no reason disclosed by the petitioners to seriously doubt the possession proceedings. Merely because the petitioner doubts the translation of those proceedings, is no reason to doubt the same. It has been argued by the learned counsel for the petitioner that the taking over of possession was itself in violation of stay orders operating in Writ Petition CW No.2325/81. If that were so, it was for the petitioner to raise a grievance in that regard at the relevant point of time in the said writ petition, or by initiating proceedings under the Contempt of Court Act, 1971. At this

stage, since the petitioner has suppressed the order of dismissal of the earlier writ petition on 20.03.1997, it is not even clear to us whether the petitioner raised any dispute with regard to the possession proceedings in the said writ petition, since the dismissal of the writ petition came about 15 years after the taking of possession by the respondents.

12. Our attention has been drawn by Ms. Tyagi, learned counsel, to para 359 of the judgement of the Constitution Bench of the Supreme Court in the *Indore Development Authority Vs. Manoharlal* (2020) 8 SCC 129 which reads as follows:

“359. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act of 2013. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negated. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under section 24(2) of the Act of 2013.”(emphasis supplied)

13. On the other hand, learned counsel for the petitioner has sought to place reliance on para 342 which reads as follows:

“342. Section 24(2) is sought to be used as an umbrella so as to question the concluded proceedings in which possession has been taken, development has been made, and compensation has been deposited, but may be due to refusal, it has not been collected. The challenge to the acquisition proceedings cannot be made within the parameters of Section 24(2) once panchnama had been drawn of taking possession, thereafter re-entry or retaining the possession is that of the trespasser. The legality of the proceedings cannot be challenged belatedly, and the

right to challenge cannot be revived by virtue of the provisions of Section 24(2). Section 24(2) only contemplates lethargy/inaction of the authorities to act for five years or more. It is very easy to lay a claim that physical possession was not taken, with respect to open land. Yet, once vesting takes place, possession is presumed to be that of the owner, i.e., the State Government and land has been transferred to the beneficiaries, Corporations, Authorities, etc., for developmental purposes and third-party interests have intervened. Such challenges cannot be entertained at all under the purview of Section 24(2) as it is not what is remotely contemplated in Section 24(2) of the Act of 2013.”(emphasis supplied)

14. The Supreme Court has clearly held that stale claims would not be revived by reference to section 24(2) under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013. In the present case, the petitioner has done exactly that. The acquisition proceedings, as noticed above, were initiated in 1959 and culminated with the passing of the award on 18.11.1983 and the Writ Petition CW No. 2325/81 was dismissed by this Court on 20.03.1997. The petitioner could have, and ought to have raised (if not actually raised) all its grievances in relation to the acquisition in the earlier writ petition which was preferred in the midst of the acquisition proceedings i.e., before the taking of the possession on 15.06.1982, and the passing of the award of 18.11.1983.
15. These developments, namely, the taking of possession and the passing of the award, took place during the pendency of the earlier writ petition. Therefore, the petitioner is clearly barred from now raising challenge to the earlier acquisition proceedings, either on the ground of possession not been taken duly, or compensation not being tendered by the respondents. We are not inclined to conduct a roving and fishing inquiry at the behest of the petitioner. The petitioner cannot be permitted to stand up today and raise doubts about the official acts of the respondents, which were

undertaken way back in 1982-1983. There is a presumption in law of official acts being undertaken regularly. With passage of time, the said presumption has only got strengthened and stands crystallised today. With passage of such length of time, Petitioner is not even to allowed to question the same.

16. If the plea raised by the Petitioner to raise a doubt on the Possession Proceedings were to be permitted, at any point of time, a person may stand up, even after 50 years or 100 years, and start questioning official acts by raising doubts about their regularity and legality. This cannot be permitted. Merely because the petitioner claims to be in actual physical possession is no ground to declare that the acquisition has lapsed, or to quash the same.
17. For the aforesaid reasons, we do not find any merit in submissions of the petitioner. The writ petition was correctly dismissed on 15.07.2021 on account of the same being covered by the judgement of the Constitution Bench of the Supreme Court in Indore Development Authority (*supra*).
18. The said application is dismissed in the above terms.

VIPIN SANGHI, J

JASMEET SINGH, J

SEPTEMBER 3, 2021/shw