

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

% **Decided on: 13th April, 2022**

+ **W.P.(C) 12324/2018**

SH. PREM CHAND

..... Petitioner

Represented by: Mr. Sanjay Sharawat, Mr.
Divyank Rana, Mr. Ashok
Kumar, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondent

Represented by: Mr. Ravi Prakash, CGSC with
Mr. Farman, Ms. Shruti Shiv
Kumar, Advs. for R-1.
Mr. Rajneesh Kumar Sharma,
Adv. for R-2,3&4.
Ms. Prabhsahay Kaur, Standing
Counsel with Ms. Shilpa
Dewan, Adv. for R-5/DDA.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

MUKTA GUPTA, J. (ORAL)

1. The present writ petition was filed by the petitioner, inter alia, seeking declaration that the land acquisition proceedings initiated vide the notification dated 26th September, 1966 under Section 4 of the Land Acquisition Act, 1894 (in short the Act) culminating into the passing of the award No. 102-A/1972-73 in respect of land bearing No. 5, khasra No. 56-64 measuring 200 sq. yds. situated in village Sarai Pipal Thala, Mahindra Park Delhi having deemed to have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in the Land Acquisition,

Rehabilitation and Re-establishment Act, 2013 (in short the Act of 2013) or in the alternative allotment of an alternative plot in lieu thereof besides cost.

2. According to the petitioner after the notification dated 26th September, 1966 was issued under Section 4 of the Act, a declaration under Section 6 of the Act was issued on 30th December, 1966 whereafter the petitioner who wanted to provide a shelter for his family purchased the above-noted plot of land in the unauthorized colony named village Sarai Pipal Thala now known as Mahindra Park on 4th January, 1972 as the petitioner was unaware of any acquisition proceedings and the sale deed was duly registered in the name of the petitioner by the Sub-Registrar. Thereafter, the petitioner carried out the construction on the said plot of land on 20th May, 1975 which was demolished to carve out a colony by the name Jahangir Puri. On 31st July, 1976 the petitioner submitted his claim statement before the Land Acquisition Collector (in short the LAC) seeking compensation in respect of the said plot of land as also filed an application dated 24th July, 1978 with the Land & Building Department to avail the benefit of an alternative plot in terms of the policy dated 2nd May, 1961. An application was also filed for compensation in lieu of the acquisition on 4th December, 1979.

3. The respondent vide its letter dated 11th February, 1980 required the petitioner to submit certain documents, which the petitioner personally submitted. However, despite the same, the respondent vide its letter dated 6th May, 1980 stated that in view of the non-submission of documentary evidence in support of the claim made for allotment of alternative plot, the same cannot be processed. The petitioner made various communications to the respondent Land & Building Department as also to respondent

No.5/DDA. However, he neither got the compensation nor the alternative plot. Subsequently, vide the letter dated 15th April, 1994 Land & Building Department required the petitioner to appear personally on 30th April, 1994 and when the petitioner appeared, he showed all the relevant documents and satisfied the claim but again nothing transpired and the petitioner continued making various representations. The petitioner thereafter filed an application under RTI on 23rd June, 2014 which was declined noting that the information sought does not fall within the definition of an information under Section 2(f) of the RTI Act, 2005.

4. Aggrieved there from, the petitioner preferred an appeal under the RTI Act on 23rd June, 2014 wherein the first appellate authority vide the order dated 9th July, 2014 stated that a seniority list of 11,000 applicants on the basis of date of application has been uploaded on the website of Department for processing and every month 250 applications were processed, as directed by this Court in the matter of Rambir Singh Vs. Govt. of NCT Delhi.

5. The petitioner then preferred the second appeal in which the Commission vide order dated 9th March, 2015 directed the L&B Department to check the files manually and furnish the information. It was informed that the file of the petitioner was missing and the same was being searched. Petitioner also filed complaints before the Public Grievance Commission and as the orders of the CIC dated 6th July, 2016 were not being implemented, challenging the order of CIC dated 6th July, 2016 the L&B Department filed W.P.(C) 6192/2017 wherein this Court issued notice limited to prayers in Para 51(a) & (b) vide order dated 6th July, 2016. Disposing of W.P.(C) 6192/2017 this Court though upheld the

compensation of ₹50,000/- for the loss under Section 19(8)(b) of the RTI Act but quashed the remaining order directing paying the value of land as compensation and other entitlements as prescribed in the Act of 2013 for acquiring the land.

6. The operative portions of the order dated 8th February, 2018 in W.P.(C) 6192/2017 read as under:

“20. Insofar as the direction to pay compensation of ₹50,000/- is concerned, the undisputed facts are that the respondent has been repeatedly approaching the authorities but has not been provided the information that he is seeking. The inspection of the relevant files had not been provided to him as the said files appear to have been misplaced/lost. In this view, this Court is not inclined to interfere with the directions to award a compensation of ₹50,000. This Court considers the same to be reasonable considering that the respondent is an aged person and has had to approach the CIC twice by way of second appeals. Concededly, the respondent has not been provided the inspection of the relevant files as sought by him.

21. The petition and the pending application are, accordingly, disposed of by setting aside the impugned order to the extent that it directs payment of compensation equivalent to the value of land claimed to be acquired by GNCTD/DDA.”

7. Thereafter, the petitioner preferred the present petition, inter alia, seeking the prayers as noted in Para 1 above.

8. In response to the writ petition, a reply affidavit has been filed by the Land Acquisition Collector (North) wherein the relevant paras stating that the notification dated 26th September, 1966 under Section 4 of the Act culminating into the passing of the award No. 102-A/1972-73 will be deemed to have lapsed by virtue of Section 24(2) of the 2013 Act.

9. Relevant Paras 6 and 7 of the counter affidavit filed by the Land Acquisition Collector reads as under:

“6. That Khasra No. 56 (12-0) & 64 (8-13) situated in the revenue estate of village Pipalthala, Delhi were notified under section 4 of Land Acquisition Act on 26.09.1966 followed by declaration under section 6 of Land Acquisition Act on 30.12.1966 for public purpose namely planned development of Delhi. In pursuance of said notification, notices under section 9 & 10 as provided under the Act, were issued to the interested persons, inviting the claims from all the interested persons and claims were also filed by the interested persons. The then Land Acquisition Collector passed an Award No. 102A/1972-73 dated 23.03.1977 after considering the claims of the claimants. It is submitted that as per records of the respondent the possession of Khasra No. 56 has been taken by Government on 08.02.1978 and as far as Khasra No.64 is concerned the possession could not be taken due to built up structure. It is submitted that the petitioner is not the recorded owner of the land in question and as per the records Sh. Maha Singh S/o Mukh Ram is the recorded owner of the land at the time of acquisition of land. Therefore the petitioner has no locus to file the instant petition before this Hon'ble Court. That as per Naksha Muntazamin the Compensation amount in respect of Khasra No. 56 amounting to ₹26325.80 was sent to the Court of Ld. ADJ on 30.09.1980 and there is no entry of compensation in respect of Khasra no. 64 in the Naksha Muntazamin.

7. That the captioned petition is barred by delay and latches as the petitioner is challenging the acquisition of the 1966 in the captioned writ petition after more than 5 decades. That this Hon'ble Court vide its order dated 17.12.2018 in Writ Petition (C) No. 6309 of 2015 titled as Alok Kumar Yadav & Ors. versus UOI & Another dismissed the petition on the ground of delay and latches and while dismissing the petition the Hon'ble Court observed as under:-

9. The delay in approaching a writ court for discretionary relief, unless properly explained, would

disentitle the Petitioner to relief. This has been reiterated in a large number of decisions of the Supreme Court. In Tridip Kumar Dingal v. State of West Bengal (2009) 1 SCC 768, it was observed as under:

“56. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of state claims and exhumed matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (See also: P.S. Sadasivaswamy v. State of Tamil Nadu (1975) 1 SCC 152).”

10. In Tamil Nadu Housing Board, Chennai v. M. Meiyappan (2010) 14 SCC 309, the Supreme Court held the as follows:

“13. It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution. If there is such negligence or omission on the part of the petitioner to assert his right which, taken in

conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extra-ordinary jurisdiction and grant relief to the writ petitioner.”

11. *The following observation in State of Jammu & Kashmir v. R. K. Zalpuri (2015) 15 SCC 602 is also relevant on this aspect:*

“27. The grievance agitated by the respondent did not deserve to be addressed on merits, for the doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim “deo gratias” – “thanks to God”.

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless noninterference would cause grave injustice. The present case, needless to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.”

12. *In light of the legal position discussed hereinabove, this Court is not satisfied that the Petitioners in the present case are entitled to relief.*

13. *The writ petition is, therefore, dismissed on the ground of delay and laches.”*

10. As per the counter affidavit of the LAC though physical possession of khasra No.56 has been taken by the Government on 8th February, 1970,

however physical possession of khasra No.64 could not be taken due to built up structure. Further the petitioner not being the recorded owner in the land at the time of acquisition of land in respect of khasra No. 56 a compensation amount of ₹26,325.80 was sent to the Court of learned ADJ on 30th September, 1980. Hence as regards khasra No.56 is concerned, both the acquisition has taken place with possession having taken place and compensation deposited.

11. In the present petition, admittedly the petitioner purchased the property after the acquisition proceedings had commenced and notification under Section 4 and declaration under Section 6 has been issued. Except a general power of attorney, nothing has been placed on record by the petitioner to show that the property for which he had entered into an agreement to sell and for which a sale deed was executed fell in khasra No.64 of which possession has not been taken.

12. Constitution Bench of the Hon'ble Supreme Court in Indore Development Authority Vs. Manoharlal & Ors. 2020 (8) SCC 129 dealing with Section 24(2) of the Act of 2013 which provides for right of compensation held:

“365. Resultantly, the decision rendered in Pune Municipal Corporation and Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. The decision in Shree Balaji Nagar Residential Association (supra) cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra (Dead) through L.Rs. and Ors., (supra), the aspect with respect to the proviso to Section 24(2) and whether 'or' has to be read as 'nor' or as 'and' was not

placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided Under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings Under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition Under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation Under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest Under Section 34 of the said Act can be granted. Non-

deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition Under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided Under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed Under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount Under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed Under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated Under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession Under Section 16 of the Act of 1894, the land vests in State there is no divesting provided Under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse Under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. *Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”*

13. In view of the Constitution Bench decision of the Hon'ble Supreme Court the petitioner will not be entitled to any relief. The petitioner will not be entitled to any relief for want of any document to show that he was the recorded owner of the property and that property which was in khasra No.64. The writ petition is also liable to be dismissed for gross delay and latches for the reason the acquisition proceedings started in the year 1966, the demolition of the petitioner's structure took place in the year 1975 and when the possession was taken admittedly there was no constructed plot and after the award dated 23rd March, 1977 the petitioner has approached this Court in the year 2018. Merely by filing various applications to the authorities under RTI the period of limitation for filing the writ petition would not get extended indefinitely.

14. Petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 13, 2022
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