

Maya Devi vs Union Of India & Ors on 29 January, 2019

Author: S. Muralidhar

Bench: S.Muralidhar, Sanjeev Narula

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P. (C) 55/2017
MAYA DEVI Petitioner
Through: Mr SK Rout with Mr Vikram Singh and Mr
Aman Mehrotra, Advocates.
versus
UNION OF INDIA & ORS. Respondents
Through: Mr Naveen Kumar Raheja, Advocate for
LAC/L&B
Mr Arun Birbal, Advocate for
Respondent/DDA.
CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA
ORDER

% 29.01.2019

1. The prayers in the present petition read as under:

"i. Issue a writ of certiorari and/or any other appropriate writ, order or direction thereby directing the respondents to determine the adequate compensation under Section 24(1) (a) of new Act, 2013 for the subject land of the Petitioners comprised in Khasra No.1324/134 min (05-05) and 1342/134 min (02-13-10) total admeasuring 07 Bigha 18 Biswa, District Central, Delhi to the share of the petitioners and/or;

OR IN ALTERNATIVE ii. Issue a writ certiorari and/or any other writ, order or direction thereby directing the respondents to give other equivalent land in the near proximity of the subject land in village Sadhora Khurd, District Central, Delhi as an exchange of the subject land and/or;

iii. Pass any other or further order which this Hon ble Court may deem fit and proper in the interest of justice."

2. According to the narration in the petition, it is seen that notification under Section 4 of the Land Acquisition Act, 1984 („LAA) was issued on 21 st February 1966 followed by declaration under Section 6 LAA on 1st September 1966. It is submitted by the Petitioners that no Award has been passed under Section 11 LAA till the date of filing of the petition and yet, admittedly, possession of the said land has been taken by the Respondents without determining or paying any compensation to the Petitioners. Thereafter the petition straightaway refers to the passing of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 („2013 Act)and that compensation for the subject lands should be determined, as physical possession has been taken, and paid to the Petitioners.

3. In the counter-affidavit filed on behalf of the LAC, it is submitted that the Petitioner has not filed any revenue nor any title documents to support the contention that the Petitioner or her predecessors-in-interest were ever the recorded owners of the land.

4. In the counter-affidavit filed by the DDA, it is submitted that though the relief sought for is against the land comprised in Khasra Nos. 1324/134 min. (05-05) and 1342/134 min (02-13-10), there is no such Khasra No.1342/134 min. (02-13-10). It is further submitted that as per the land records, the land bearing Khasra No.1324/135 was "acquired for re-settlement of displaced persons by the Government at the public expenses vide Notification No.F15(67)53 dated 5/7th December 1953 issued under Section 3 of the Re- settlement of Displaced Persons (Land Acquisition) Act, 1948 (Annexure-

1)." It was only for this reason that the Khasra No.1324/134 stood excluded from the Award No.1967 dated 25th April 1967 announced under the LAA.

As a result, Section 24(2) of the 2013 Act is not applicable in the present case.

5. It is also submitted that on 2nd September 1982, Ministry of Supply and Rehabilitation transferred the unutilized land (including the land in question) to the DDA on payment of Rs.30 crores. On 18th February 1988, physical possession of the land was handed over to the DDA. The possession letter has been enclosed.

6. It is the admitted case of the Petitioner that no Award has been passed in respect of the subject land and that possession of the land has been taken by the Respondents. With no Award having been passed, and possession of the land having vested with the DDA since 1988, the conditions for seeking relief the provisions of the 2013 Act do not stand fulfilled. Be that as it may, no rejoinder has been filed to the counter affidavit of the DDA to contest the assertions regarding taking over of the possession. In any event, the assertion by the Petitioners that they continued to remain in possession of the land in question gives rise to a disputed question of facts. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief.

7. On the aspect of laches, in Mahavir v. Union of India (2018) 3 SCC 588 the Supreme Court has observed as under:

"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."

8. The above observations have been reiterated in the judgment of the three Judge Bench in Indore Development Authority v. Shailendra (2018) 3 SCC 412 where it was observed as under:-

"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 negated 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."

9. The above observations have been followed by this Court in several orders including the order dated 10th January, 2019 in WP(C) No. 4528/2015 (Mool Chand v. Union of India) and similar petitions have been dismissed on the ground of laches.

10. For the aforementioned reasons, the writ petition is dismissed both on the ground of laches as well as on merits, but in the circumstances, with no orders as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 29, 2019 mw