

Raghubir Singh & Ors vs Union Of India& Ors on 11 February, 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) 3641/2016 & CM 6380/2019

RAGHUBIR SINGH & ORS.

..... Petitioners

Through:

Mr. Dhiraj Singh Panwar, Advocate

versus

UNION OF INDIA& ORS.

..... Respondents

Through:

Mr. Rajesh Kumar, Ms. Santwana for UOI.
Mr. RK Sharma for Govt. of Delhi.
Mr. Dhanesh Relan, Standing Counsel with
Mr. Rajeev Jha and Ms. Gauri Chaturvedi
for R3/DDA
Mr. Sachin Nawani for L&B/LAC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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1. The prayers in the petition read as under:

"a. Pass a writ, order or direction in the nature of a writ of declaration, declaring the acquisition proceedings initiated in respect of the land comprised in Khasra Nos. 587/538 admeasuring 10 Bigha o Biswa, to the extent of 1/2 share, situated in revenue state of Village Kasoompur, Tehsil & District Delhi as deemed to have lapsed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, b. Pass a writ, order or direction in the nature of a writ of declaration, declaring the petitioners to be owners in respect of land comprised in Khasra Nos. 587/538 admeasuring 10 Bigha o Biswa, to the extent of 1/2 share, situated in revenue state of Village Kasoompur, Tehsil & District Delhi.

c. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act,

1894 („LAA) was issued on 24th October 1961, followed by declaration under Section 6 of the LAA on 5 th January 1965. The impugned Award No. 1901 was passed on 27th May 1966. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the counter-affidavit filed on behalf of the ADM (New Delhi, Jam Nagar), it is submitted that the physical possession of Khasra No. 587/538 (10-00) was taken on 26th July 1966. It is also submitted that as per the Naksha Muntazim, compensation amount of Rs. 1,18,510.75/- was sent to the court of the ADJ under Section 30/31 of LAA vide item number 108 on 26th August 1968.

4. In the counter-affidavit of the DDA it is stated that the land bearing Khasra No. 587/538(10-00) was acquired for the public purpose of "Planned Development of Delhi". It is stated that the physical legal possession of the land was handed over to the DDA by LAC/L&B on 26th July 1966. On the aspect of compensation it is stated in Para 9 as under: -

"9. Compensation of the land in question stands duly remitted by the Central Government to the L&B Department through the Revolving Fund at the time of announcement of the Award by the Commissioner (L&H). It is also admitted by the petitioners in their List of Dates and Events, as also in Para 12 of the petition that after the passing of the award, petitioners received compensation for the acquired land in question. Issuance of the Notifications and passing of the award is also admitted by the petitioners."

5. The rejoinder filed by the Petitioner to the counter affidavit of LAC and DDA merely reiterates the averments in the petition. On the aspect of compensation, the Petitioners claim that they have not received any compensation. In para 7 of the rejoinder to the counter-affidavit of the LAC, the Petitioners have denied that any amount was deposited with the ADJ for acquisition of the subject land and that possession of the subject land was not taken 26th July 1966.

6. In any event, the assertion by the Petitioners that they continue to remain in possession of the land in question (while admitting to receiving compensation) gives rise to a disputed question of fact. 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 decision has been re-affirmed by the judgment of a three Judge Bench of the Supreme Court 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 17th 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. The application is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 11, 2019 mw