

# Manish Gupta vs Govt. Of Nct Of Delhi And Ors on 18 January, 2019

**Author: Sanjeev Narula**

**Bench: S.Muralidhar, Sanjeev Narula**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 2791/2015

MANISH GUPTA ..... Petitioner

Through: Mr. M. P. Bhargava, Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS. .... Respondents

Through: Mr. Dhanesh Relan, Standing Counsel  
DDA.

Mr. Yeeshu Jain and Ms. Jyoti Tyagi,  
Advocates FOR LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% 18.01.2019

1. The prayer in this writ petition reads as under:

"i. Issue an appropriate writ, order or directions declaring the entire acquisition proceedings in respect of the land admeasuring 300 square yards comprised Khasra no 53/21 situated in the revenue estate of Village Karala, Tirthankar Nagar, Jain Colony, Delhi, including the notification bearing no.

No.F.ll(19)/2001/L&B/ LA/20112 dated 21.03.2003 issued under Section 4 of the Land Acquisition Act, 1894 and all subsequent proceedings to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Re- habilitation and Re-settlement Act, 2013.

ii. Pass any further order/s that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. In present case, a Notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 21st March, 2003 for the purpose of the Rohini Residential Scheme which included a larger extent of 3 to 6 bighas of land. A declaration under Section 6 of the LAA was issued on 18th March, 2003, followed by an Award bearing No. 22/2005-06 rendered on 2nd January, 2006. It is

pointed out that the subject land is part of the Jain colony which is an unauthorised colony. The status report dated 4th December, 2006 issued by the Additional District Magistrate, Kanjhawala has been enclosed. It is stated that the said report shows that:-

"the possession of the Jain Colony, Tirthankar Nagar, Delhi, was not taken because of built up, same comprises densely built up residential dwellings and included in list of 1071 unauthorized colonies and is pending for regularization."

3. Counsel for the Petitioners submits that, he purchased the land in question on 10th July, 2007 after the Section 4 and Section 6 LAA notifications were issued. Possession of the subject land has not been taken and the compensation of the land has not been paid nor deposited in the Reference court as per Section 31 of the LAA. Thus, the Petitioners are entitled for a declaration under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred to as "the Act"), to the effect that the acquisition proceedings in respect of the subject land stand lapsed.

4. On the contrary DDA has in its counter affidavit inter-alia pointed out that the land in question forms part of the larger extent of land acquired for the Rohini Residential Scheme. Reference is made to the orders passed by the Supreme Court in SLP (C) No. 16385-88/2012 titled 'Rahul Gupta vs. DDA' in terms of which possession of the land acquired by the Rohini Residential Scheme are deemed to be with the DDA. It is further pointed out that physical possession of the land after demolishing the existing construction was handed over to the DDA on 23rd February, 2007. A copy of the possession proceedings is enclosed as Annexure R-1.

5. In the counter affidavit of the LAC it is confirmed that physical possession was taken by the Government on 23rd February, 2007. It is pointed out that the Petitioner never approached the office of the LAC for payment of compensation.

6. A preliminary objection has been raised on the ground of laches. The narration in the petitions themselves show that the award was made way back on 10th January, 2006 and no steps were taken by the Petitioner for well over a decade to seek any relief in respect of the land acquisition proceedings and in particular to claim compensation. As regards the question of possession with the orders of the Supreme Court in the case of Rahul Gupta vs. DDA pertaining to the Rohini Residential Scheme the DDA is deemed to be in possession of the lands in question acquired for that purpose. Therefore, the essential conditions for a declaration for lapsing of land acquisition proceedings under Section 24(2) of the 2013 Act are not fulfilled in the present case with the DDA and LAC confirming that physical possession is not with the Petitioners. At the highest this gives rise to a disputed question of fact which cannot be examined in the present case. It is also pointed out that purchase of the subject land was illegal, in as much as Section 4 and Section 6 were issued prior to purchase of land by the Petitioner.

7. There are two major difficulties in the way of the Petitioners; one is that the petition is barred by laches.

8. In *Indore Development Authority vs. Shailendra* (2018) 3 SCC 412 the Supreme Court 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 other difficulty that arises is that it is an admitted position that the land in question is part of an unauthorized colony. This Court has consistently been refusing the deemed lapsing of land acquisition proceedings when the property in question was a part of unauthorised colony.

10. In its order dated 10th January, 2019 in WP(C) No. 3630/2018 'Akhil Sibal vs. GNCTD' it was observed in this context by this Court as under:-

"16. It appears that the Petitioners are pursuing parallel proceedings and seeking different reliefs in respect of the same lands in question - one is to seek regularization by contending that the building on the land in question is part of an unauthorized colony, the other is to invoke Section 24 (2) of the 2013 Act, to seek lapsing of the land acquisition proceedings. In the considered view of the Court, the attempt at invoking Section 24 (2) of the 2013 Act is, in the circumstances, misconceived. Clearly, therefore, the present petitions are an abuse of the process of the Court where the facts speak for themselves.

17. Further, the manner in which the facts have been narrated, a relief under Section 24 (2) of the 2013 Act, is not even capable of being granted in either of the petitions. In similar circumstances, this Court had in its order dated 19th December, 2018 in W.P.(C) No.190/2016 R. Bhagwan Batra v. Government of NCT of Delhi, rejected the prayers of the Petitioners where they were seeking a similar relief in respect of the land an unauthorized colony i.e. Guru Ramdass Nagar.

The Court there has pointed out that the Petitioner should be pursuing their case for regularization.

18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting regularization orders. A large portion of these colonies are by way of encroachment on public land, some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premises on which such a regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those structures. That very basis gets contradicted as some of them tried to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable."

11. Consequently, the Petitions are dismissed both on the ground of laches as well as on merits.

SANJEEV NARULA, J.

S. MURALIDHAR, J.

JANUARY 18, 2019 nk