

Husan Ara vs Govt. Of Nct Of Delhi & Ors on 8 February, 2019

Author: S. Muralidhar

Bench: S.Muralidhar, Vinod Goel

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 11427/2016

HUSAN ARA

..... Petitioner

Through: Mr. Ekram Ali, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Naushad Ahmed Khan, Addl. Standing
Counsel with Ms. Manisha Chauhan for
GNCTD
Ms. Shobhana Takiar for DDA
Mr. Siddharth Panda for L&B/LAC

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL

ORDER

% 08.02.2019

1. The prayers in the petition read as under:

"a) issue a Writ/order/direction in the nature of certiorari calling for the records of the acquisition proceedings in respect of the land in question situated in the revenue estate of village Masjid Moth, Tehsil Mehrauli, New Delhi in respect of khasra number 547/85/1 and 547/85/2admeasuring 02 Bighas and 02 Biswa, acquired by wayof award No. 1945 dated 31.10.1966 by the Land Acquisition Collector, and further to issue appropriate writ and order or directions declaring the acquisition proceedings having been lapsed and have become inoperative after coming into force of the Right to Fair Compensation & Transparency in Land Acquisition Rehabilitation and resettlement Act of 2013.

b) Set-aside the Award No. 1945 dated 31.10.1966 passed by the Land Acquisition Collector in respect of KhasraNo. 547/85/1 and 547/85//2 area admeasuring 02 Bighasand 02 Biswa located in revenue estate of Village Masjid Moth, Tehsil, Mehrauli, New Delhi and land may be released to the humble petitioner."

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 („LAA) was issued on 3rd September 1959, followed by declaration under Section 6 of the LAA on 7th August 1965. The impugned Award No. 1945/65-66 was passed in 1965-1966. There is

no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the counter-affidavit filed by the DDA, it is submitted that the petition is barred by delay and laches. It is further stated that as per the land records, the land bearing KhasraNo.547/85(2-2), 548/85(3-8) has not been handed over by the LAC/ Land & Building (L&B) Department, Govt. of NCT of Delhi. It is also submitted that payment of compensation was released through revolving fund by the Commissioner (L&B) to the concerned Land Acquisition Collector.

4. The fact remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief. 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."

5. The above decision has been re-affirmed by a judgment of the 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."

6. 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.

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

S. MURALIDHAR, J.

VINOD GOEL, J.

FEBRUARY 8, 2019 mw