

# Rajpal vs Union Of India & Ors on 14 May, 2019

**Author: S.Muralidhar**

**Bench: S.Muralidhar, I.S. Mehta**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7842/2015

RAJPAL

..... Petitioner  
Through: Mr. Shyamal Kr, Mr. NN Singh  
and Mr SK Tomar, Advocates  
versus

UNION OF INDIA & ORS.

..... Respondents  
Through: Mr. Dhanesh Relan, Standing  
counsel for DDA with Ms.  
Komal Sorout, Advocate.  
Mr. Yeeshu Jain, Standing  
Counsel and Ms. Jyoti Tyagi for  
L&B/LAC.

CORAM:  
JUSTICE S.MURALIDHAR  
JUSTICE I.S. MEHTA

ORDER

% 14.05.2019

1. The prayer in the petition reads as under:

"(A) Issue appropriate writ or writs or directions or orders, declaring the acquisition proceedings initiated under the Land Acquisition Act, 1894, by the Respondents herein vide notification bearing No.F.15(304)/61-L&H(III) dated 04.09.1967 under Section 4 of the Land Acquisition Act 1894 and thereafter vide notification bearing No.F.11(13)/70-L&B dated 02.09.1970 under section 6 of the Land Acquisition Act 1894 and in respect of which award bearing No.240/86- 87 dated 22.09.1986 was made in respect of the land comprised in Khasra no. 293/57/2/2 admeasuring seven bighas and six biswas in Village Wazirabad, Tehsil in Civil Lines, District: North, New Delhi, as lapsed, in terms of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 („LAA ) for acquisition of the land in question was issued on 4th September 1967, followed by declaration under Section 6 of the LAA on 2nd September 1970. The impugned Award No. 240/86-87 was passed on 22nd September 1986.

3. The Petitioner claims to be the joint owner of the aforementioned land which he states is his ancestral land. It requires to be noted that by an order dated 31st May 2018 in CM 24074 of 2018, fifteen Applicants who also claimed to be the legal heirs of late Shri Chetan, the predecessor-in-interest of the Petitioner, were permitted to be impleaded as co- Petitioners.

4. It is claimed that the Petitioners are still in possession of the land. A survey and demarcation report of the said land has been annexed along with the petition. There is no explanation in the petition for the Petitioners not challenging the land acquisition proceedings for more than three decades after the Award was passed. The only explanation is that after the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (hereafter „2013 Act ) which came into effect from 1st January 2014, a fresh cause of action arose for the Petitioners to claim relief under Section 24 (2) thereof. Reliance is placed on an order dated 24th March 2015 passed by a Division Bench (DB) of this Court in W.P. (C) No.42 of 2015 (Raj Wadhwa v. Union of India) where in similar circumstances the relief under Section 24 (2) of the 2013 Act was granted.

5. In the counter affidavit filed on behalf of the DDA, it is submitted that the land in question was part of the acquisition of a large tract of land required for the planned development of Delhi. It is stated that physical possession of the land has not been handed over to the DDA by the LAC. As regards compensation being disbursed to the recorded owners, it is stated that "compensation against Award No.240/86-87 has already been sent to the L&B Dept. by the DDA through the Revolving Fund for disbursement to eligible persons."

6. In the counter affidavit filed by the LAC, it is stated that the present petition is liable to be dismissed as the Petitioner "is claiming relief of (07-06) falling in khasra number 293/57/2/2 whereas as per revenue document, the share in the name of Chetan is shown as 160/1356th and as per said share, the land comes to (1-18) as the total extent of said khasra is (16-03)." It is further submitted that the pursuant to passing of Award No.240/86-87 dated 21st September 1986 possession of khasra number 293/57/2/2 (16-3) "could not be taken due to built up and the compensation not paid and shown as disputed as per NakshaMuntazamin". It is further stated that the present acquisition proceedings are not covered under the 2013 Act as not only has the Award been duly made, possession of majority of the awarded land has been taken as also payment of majority of compensation to the recorded owners been made.

7. No rejoinder has been filed by the Petitioner either to the counter affidavit filed by the DDA or that filed by the LAC. The discrepancy in the relief sought by the Petitioners was noted by this Court in para 3 of its order dated 20th November 2018 as under:

"Petitioner seeks relief in respect of land to the extent of "seven bighas and six biswas" whereas learned counsel for the Petitioners, during the course of arguments, submitted that this was a typographical error and that the Petitioner is seeking relief to the respect of land admeasuring 7 acres and 6 biswas. He relies on the khatoni that has been placed on record as Annexure-A6 to CM APPL. 24074/2018 which was an application for impleadment of the other family members to this petition claiming an

interest and right of land in question and which was allowed by an order dated 30th May 2018. In the column showing "Area of each khasra no in bighas/acres", it is noted as "7-6". It is, therefore, not clear whether the Petitioner is claiming relief in respect of 7 bighas 6 biswas or 7 acres 6 biswas."

8. The Respondents were asked to produce the original records to clarify the position.

9. The assertion by the Petitioners that they continue to remain in possession of the land in question or that they are entitled to compensation gives rise to disputed questions of fact which cannot be examined in this petition. The fact further remains that the Petitioners have no explanation to offer for the inordinate delay in approaching the Court for relief.

10. 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."

11. The above decision has been re-affirmed by the 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:

"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 become 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."

12. The decision of this Court in *Raj Wadhwa v. Union of India (supra)* was passed much before the decisions of the Supreme Court in *Mahavir v. Union of India (supra)* and *Indore Development Authority v. Shailendra (supra)*. Therefore, the said order is of no assistance to the Petitioners. Also, the mere fact that with effect from 1st January 2014, the 2013 Act became operational will not relieve the Petitioner of having to explain the failure to question the land acquisition proceedings under an Award of 1986 for more than three decades.

13. It may be noted here that the reference made by a Constitution Bench in *Indore Development Authority v. Shyam Verma (2018) 4 SCC 405* regarding the correctness of the aforesaid decision in *Indore Development Authority v. Shailendra (supra)* is only as regards the extent to which it differs from the earlier view of the Supreme Court in *Pune Municipal Corporation v. Harakchand Misrimal Solanki (supra)* regarding the tendering of compensation, and on certain other issues but not on the question of petitions seeking declaration under Section 24 (2) of the 2013 Act being barred by laches. This legal position was explained by this Court recently in *Mool Chand v. Union of India 2019 (173) DRJ 595 DB*.

14. 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 interim order dated 18th August 2015 as confirmed on 12th March 2018 hereby stands vacated.

S.MURALIDHAR, J.

I.S. MEHTA, J.

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