

Dharam Singh & Ors vs Union Of India & Ors on 25 January, 2019

Author: Sanjeev Narula

Bench: S.Muralidhar, Sanjeev Narula

\$~23 to 29

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2200/2017

DHARAM SINGH & ORS

..... Petitioners

Through:

Mr. Chatanya Siddhartha, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through:

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

Mr. Pawan Mathur, Advocate for
DDA.

+

W.P.(C) 2202/2017

KULDEEP & ANR

..... Petitioners

Through: Mr. Chatanya Siddhartha, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through:

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

+

W.P.(C) 2203/2017

SANJEEV KUMAR & ORS

..... Petitioners

Through:

Mr. Chatanya Siddhartha, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through:

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

+

W.P.(C) 2204/2017

WP(C) No.2200/17 & Connected matters

Page 1 of 12

JAI DEVI

..... Petitioner

Through: Mr. Chatanya Siddhartha, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.

+ W.P.(C) 2224/2017
RAJENDER SINGH & ORS Petitioners
Through: Mr. Chatanya Siddhartha, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.

+ W.P.(C) 2226/2017
INDER SINGH Petitioner
Through: Mr. Chatanya Siddhartha, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.

+ W.P.(C) 2228/2017
RAM DUTT Petitioner
Through: Mr. Chatanya Siddhartha, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,

WP(C) No.2200/17 & Connected matters Page 2 of 12
Advocates for LAC/L&B.
Mr. Pawan Mathur, Advocate for
DDA.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA
ORDER

% 25.01.2019

SANJEEV NARULA, J.:

1. These seven writ petitions, that were heard separately, arise out of a similar set of facts and are being disposed of by this common judgment.

2. The Petitioners are seeking a declaration that the acquisition proceedings in respect of land situated in Revenue Estate of village Mohamadpur Majri, New Delhi (hereinafter "the subject land") stand lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter "the 2013 Act"). The area of the land and its relevant khasra number corresponding for each Petition has been consolidated as under:

S.No.	Writ Petition (Civil) No.	Khasra No.	Area
1.	2200/2017	22//11 min (4-06), 19 min (4-08), 20 (4-04), 21 (4-12), 23//16 (4-04), 25 (4-16), 43//6 (4-09), 14 (4-16), 15 (4-12), 16 (4-12), 17 (4-16), 24 (4-16), 25 (4-12), 46//4/1 (2-16), 5 (5-00), 35//2min (2-16), 3 (4-16), 9min (3-12), 46//4/3 (1-00), 7(3-14), 8(4-16)	
2.	2224/2017	23//6 (3-18), 13/2(2-12), 14(4-16), 15(4-14), 17(4-4), 22/1(4-9), 26(0-2), 18//19 (3-3) 27/18	27 bighas 18 biswas
3.	2203/2017	39//6/2 (2-08), 14 (4-16), 15 (4-16), 16 (4-16), 17 (4-16), 24 (4-16), 25 (4-16) and 40//10/2 (2-08), 11 (4-16), 12 (5-06), 19 (3-00), 20 (4-16), 21 (4-16), 22 (0-16)	57 bigha 2 biswa
4.	2204/2017	26//1 (4-12), 40//2 (4-16)	09 bigha 08 biswa
5.	2228/2017	35//4 (4-12), 35//7 (4-12), 35//8 (4-16), 357/12(3-18), 35//14 (4-08) and 39//11 (4-16), 39//12 (4-16), 39//13 (4-16)	36 bighas 14 biswas
6.	2202/2017	22//18 (0-16), 23 (3-14)	4 bigha 10 biswas
7.	2226/2017	40//3 (4-8), 40//8 (2-10) and 40//9 (4-12)	16 bighas 04 biswas

3. The common case of all the Petitioners is that they are in physical possession of their respective portions in the subject land in question. It is not in dispute that a notification dated 21st March 2003 was issued under section 4 of the Land Acquisition Act, 1984 (hereinafter "LAA") for public purpose namely Rohini Residential Scheme, followed by a declaration dated 19th March 2004 under

Section 6 of the LAA. An Award No. 20/2005- 2006/DC(NW) was passed on 18th November 2005.

4. The Petitioners admit the receipt of compensation in respect of the acquisition, however, it is alleged that the Petitioners are still in physical possession of the subject land. It is noted that some of the landowners of village Mohamadpur Majri had filed W.P. No. 1545 of 2014 (Dharam Singh v. Union of India), challenging the aforementioned land acquisition proceeding. This Hon'ble Court vide order dated 10th March 2014, dismissed the petition on the ground of delay and laches which reads as under:

"W.P.(C) No.1545/2014 and CM No.3231/2014 This writ petition is concerned with the same Notification under Section 4 of the Land Acquisition Act, 1894 and subsequent Notification under Section 6 in respect of Village? Mohammadpur Majri, Delhi, which was the subject matter of W.P.(C) No.2501/2013 entitled Naresh Kumar and Ors. Vs. Union of India and Ors. as also W.P.(C) No.958/2014 entitled Rajendra Singh and Ors. Vs. Union of India and Ors. Those writ petitions were dismissed by the Division Bench of this Court on the ground of delay and laches by separate orders dated 17.04.2013 and 10.02.2014.

For the same reason, this writ petition is also dismissed. It is ordered accordingly. The pending applications are disposed off."

5. The aforesaid order was challenged before the Supreme Court in SLP (C) No. 13358/2014 which was dismissed as withdrawn. Thereafter the present Petitioners filed another writ petition being W.P. (C) No. 4712 of 2015 (Dharam Singh v. UoI) which was also dismissed as withdrawn, vide order dated 22nd November 2016, which reads as under:

"The learned counsel for the petitioners submits that he may be permitted to withdraw this writ petition with liberty that the petitioners may file individual petitions.

The writ petition is dismissed as withdrawn with the aforesaid liberty."

6. In view of the leave granted the Petitioners have now approached this Court by way of the present petitions.

7. The Land Acquisition Collector (LAC) in its counter affidavit filed in all the petitions, has disputed the Petitioners' claim of having possession of the subject land. According to the LAC, the possession of the acquired lands was duly taken on 2nd August 2006 (in W.P. Nos. 2200/17, 2204/17, 2203/17, 2202/17, 2228/17 and 2226/17). In respect of W.P. 2224 of 2017 part possession was acquired on 2nd August 2006 and remaining possession was acquired on 21st December 2012. Thereafter, the subject land was handed over to the beneficiary department- DDA on the spot on the above stated dates. A preliminary objection has further been raised by the LAC that the petitions are liable to be dismissed on account of delay and laches. As regards payment of compensation, it is their stand that compensation stands paid. The details of the payment in respect of all the petitions is as under:

S. No.	W.P. (C)	Date of payment of compensation	Amount
1.	2200/2017	15.12.06	Rs. 1,11,29,283/-
		16.1.2007	Rs. 1,11,29,283/-
		22.1.2007	Rs. 34,57,576/-
		22.1.2007	Rs. 34,57,576/-
		26.9.2007	Rs. 4,12,195/-
		27.2.2007	Rs. 37,09,760/-
		26.9.2007	Rs. 4,12,195/-
		26.9.2007	Rs. 4,12,195/-
2.	2224/2017	23.11.06	Rs. 53,88,777/-
		30.11.06	Rs. 26,94,388/-
		18.6.09	Rs. 10,61,8281-
		18.6.09	Rs. 5,30,914/-
		12.7.2013	Rs. 8,36,189/-
		12.7.2013	Rs. 4,18,0941-
3.	2204/2017	20.12.06	Rs. 24,95,295/-
4.	2203/2017	16.11.06	Rs. 60,63,037/-
5.	2202/2017	1.2.2007	Rs. 11,94,556/-
6.	2228/2017	27.4.2007	Rs. 1,94,84,543/-
7.	2226/2017	18/01/2006	Rs. 83,36,364/-

8. It is confirmed by DDA in its reply that possession of the subject land has been handed over to it on 2nd August 2006 (in W.P. Nos. 2200/17, 2204/17, 2203/17, 2202/17, 2228/17 and 2226/17). In W.P.(C) 2224 of 2017, possession was partially handed over on 2nd August 2006 and remaining possession was acquired on 21st December 2012. A copy of the possession proceedings has been annexed to the counter affidavits.

9. The Petitioners have filed rejoinder affidavits asserting that they continue to be in possession of the land and that the proceedings conducted in respect of the same are a farce and mere exercise on papers. Though the Petitioners have not disputed receiving compensation for the subject land, it is urged that as long as possession of the subject lands remained with the Petitioners, it would not matter if they had received compensation since one of the conditions specified under Section 24 (2) of the 2013 Act stood fulfilled and this was sufficient for a declaration that the land acquisition proceedings were deemed to have lapsed. Reliance was placed on the decision of *Pune Municipal Corporation v. Harakchand Misrimal Solanki* reported at (2014) 3 SCC 183, *Prahlad Singh v. Union of India* reported at (2011) 5 SCC 386.

10. The Supreme Court in *Executive Engineer Jal Nigam Central Stores Division U.P. v. Suresh Nand Juyal* (1997) 9 SCC 224 considered what could be termed as "symbolic possession" and held as under:

"Suffice it so say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a bar to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified."

11. The Court would also like to observe that in *Pune Municipal Corporation (supra)*, there was no observation to the effect that the retention of possession notwithstanding the acceptance of full compensation would per se attract provisions of Section 24 (2) of the 2013 Act. Further, the Court finds that in *DDA v. Sukhbir Singh AIR 2016 SC 4275*, the Supreme Court referred to an earlier decision in *Raghubir Singh Sehrawat v. State of Haryana (2012) 1 SCC 792*, where the legal position was explained as under:

"(i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring /designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilized in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken".

12. Once the compensation has been admittedly received in full the only inference could be that the Petitioners have again trespassed into the land after surrendering it, as is noticed in Suresh Nand Juyal (supra). Consequently, none of the conditionalities attached to Section 24 (2) of the 2013 Act is fulfilled in the present case.

13. A further factor is that although the Award was passed way back on 18th November 2005, no effort was made thereafter by the Petitioners to assert that they continue to remain in actual physical possession of the land in question. They appear to have moved the Court only in 2015. The delay in approaching the Court for relief is inordinate and has no convincing explanation.

14. In Mahavir v. Union of India (2018) 3 SCC 588, the Supreme Court 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."

15. The aforesaid Judgment has been considered by the Supreme Court in the decision of Indore Development Authority v. Shailendra reported at (2018) 3 SCC 412, relevant portion of which is reproduced hereunder:-

"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 W.P.(C) Nos. 946/2017 & 948/2017 Page 5 of 7 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 W.P.(C) Nos. 946/2017 & 948/2017 Page 6 of 7 would be received or entertained by the courts."

16. Another difficulty for the Petitioners is that the land in question has been acquired for Rohini Residential Scheme. Although they seek to contend that the orders passed by the Supreme Court in SLP (C) No.16385-88/2012 (Rahul Gupta v. DDA) do not pertain to Village Mohamadpur Majri, Rohini where the land in question is located, this Court has rejected a similar plea earlier in its order dated 22nd November 2018 in W. P. (C) 5111 of 2016 (Jawahar Singh v. Lt. Governor). This Court finds that in the order dated 18th October 2016 in Rahul Gupta v. DDA, the Supreme Court was categorical that "in case the applicants have re-entered possession or otherwise, they shall vacate the said land and hand over its possession forthwith to the DDA, failing which it shall be assumed to be in possession of the DDA, after the expiry of ten days from the passing of the instant order."

17. Following the aforementioned decisions and in the light of the facts and circumstances listed out hereinbefore, the present petition is dismissed both on the ground of laches as well as merits. The interim stay stands vacated.

SANJEEV NARULA, J.

S.MURALIDHAR, J.

JANUARY 25, 2019 Bisht