

Prem Singh & Ors vs Union Of India & Anr on 31 January, 2019

Author: Sanjeev Narula

Bench: S.Muralidhar, Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 12246/2016

PREM SINGH & ORS

..... Petitioners

Through: Mr. Deepak Choudhary, Advocate.

Versus

UNION OF INDIA & ANR

..... Respondents

Through:

Ms. Mrinalini Sen, Standing Counsel
with Mr. Tanmay Yadav, Advocate
for DDA.

Mr. Rajneesh Sharma, Advocate for
LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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31.01.2019

SANJEEV NARULA, J.:

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

"It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to issue a writ / order / direction in the nature of mandamus calling for the records of the acquisition proceedings in respect of the land in question situated in the revenue estate of village Mandawali Fazalpur, Delhi acquired vide award No. 2179 dated 12.11.1968 village Mandawali Fazalpur, Delhi and further to issue appropriate writ, order or direction declaring the acquisition proceedings having lapsed and have become inoperative after the coming into force of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013.

Award cost of proceedings to the humble petitioner. The Hon'ble Court may pass such other and further order as it deems fit and proper under the facts and circumstances of the case."

2. The narration of the facts in the Petition reveals that the land comprised in khasra no. 42 (3-14), 43 (4-13), 44 (1-16), 45 (8-05) and 46 (190-00) situated in the revenue estate of village Mandawali Fazalpur, Delhi (hereinafter 'the subject land') was inherited by Petitioner No.1 and his brother (Sh.

Dhiraj Singh) from their predecessor-in-interest, namely Sh. Kishan Lal, who is the recorded owner of the subject land. Sh. Dhiraj Singh is now represented through his legal heirs i.e. Petitioner no. 2 to 6.

3. In the present case, notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 13th November 1959 for public purpose namely "Planned Development of Delhi", covering an area of 34,070 acres including the subject land. Thereafter declaration under Section 6 of the LAA was issued on 17th June 1963, followed by an Award bearing No. 2179 rendered way back on 18th November 1968.

4. Petitioners claim to be in possession of the subject land and state that compensation has not been paid for the subject land, thus, they seek a declaration of deemed lapsing of the acquisition proceedings w.r.t. the subject land, 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 2013 Act").

5. On the contrary, Land Acquisition Collector (LAC) in its counter affidavit submitted that physical possession of the subject land was taken on 3rd December 1968 and handed over to the beneficiary department-DDA. LAC has also submitted details of compensation paid to the recorded owners in its affidavit, which is as under:

"6. It is submitted that as per records, the possession of the land i.e. was taken by the Respondents on 03.12.1968. It is submitted that as far as khasra No. 46/1/2 min (4-14) is concerned Sh. Dalu s/o Sh. Dalai Ram was the recorded owner and the compensation was assessed as Rs. 8289.90 and the said amount was sent to the court of Ld. ADJ Delhi under section 30-31 of the LA Act. It is submitted that Khasra No. 42 (8-14), 43 (4- 13), 44(1-16), 45/2 min (7-18) was in ownership of Sh. Kishan Lai. Sh. Mam Chand & Nirman Finance and compensation was assessed as Rs. 82876.35. The compensation of Rs. 26290.80 was sent to the court of Ld. ADJ Delhi and the remaining amount was paid to the recorded owners."

6. DDA in its counter affidavit has affirmed that possession for the subject land was handed over to it on 3rd December 1968 and 26th July 1971 and compensation has been paid to the recorded owners of the land. Further DDA in its counter affidavit has raised a preliminary objection that the petition is barred by inordinate delay and laches and for raising disputed questions of fact which cannot be decided by this court. DDA's affidavit also encloses the copy of the possession proceedings.

7. No rejoinder has been filed by the Petitioners to contradict the above assertions of the DDA. Except for some photographs, the Petitioners have not enclosed any document in support of their assertion that the subject land is in their possession. Thus the averment of the Petitioners about continuing to remain in possession of the land becomes a disputed question of fact.

8. This petition has been filed invoking the extraordinary power of the Court under Article 226 of the Constitution of India. It is a settled position of law that, this Court, in the exercise of Writ

Jurisdiction, does not delve into disputed question of rights and title of the parties. Thus matters in which disputed questions of fact are involved, cannot be decided in a summary proceeding based solely on the pleadings of the parties. Such disputed matters must be decided by the Civil Courts after recording of due evidence in the matter.

9. The narration in the petitions themselves show that the award was made way back in 1968 and no steps were taken by the Petitioner for around five decades to seek any relief in respect of the land acquisition proceedings and in particular to claim compensation.

10. In *Mahavir v. Union of India* (2018) 3 SCC 588, the Supreme Court held 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 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 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 negative 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."

12. the above observations have been followed by this court in several orders including the order dated 10th January 2019 in W.P. (C) 4528 of 2015 (Moolchand v Union of India) and similar petitions have been dismissed on ground of laches.

13. 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 order passed by this court on 28th March 2017 which was made absolute on 5th February 2018 hereby stands vacated.

SANJEEV NARULA, J.

S. MURALIDHAR, J.

JANUARY 31, 2019 Bisht