

Ashwani Kumar Khanna & Anr vs Union Of India & Ors on 11 February, 2019

Author: S.Muralidhar

Bench: S.Muralidhar, Sanjeev Narula

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 4942/2016

ASHWANI KUMAR KHANNA & ANR. Petitioners

Through: Mr. N.S Vasisht, Mr. M.P. Bhargava,
Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sachin Nawani for L&B/LAC.
Mr. Sanjeev Sagar, Standing Counsel
with Ms. Nazia Parveen for DDA.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER

% 11.02.2019

1. The prayers in the petition read as under:

"(i) issue a writ of certiorari and/or any other writ, order ordirection of the similar nature declaring the entire acquisitionwith respect to 1 Bigha (1008 sq.yds.) land of the Petitionerscomprised in khasra Nos.932/612 (O-8) 937/614 (1-

18),situated in revenue Estate of Village Maidan Garhi, NCTDelhi having lapsed and further quashing the impugnednotification No. F.9(16)/80-L&B dated 25.11.1980 issuedunder section 4, Notification No.F.9(28)/85-L&B dated18.06.1985 issued under Section 6 of the Land AcquisitionAct, 1894 and the Award no.23/87-88 with respect to 1 Bigha(1008 sq.yds.) land of the Petitioners comprised in khasraNos.932/612 (O-8) 937/614 (1-18), situated in revenueEstate of Village Maidan Garhi, NCT Delhi.

AND

(ii) issue a writ of mandamus and/or any other writ, order anddirection of the similar nature issuing directions to theRespondents not to disturb or hinder the possession andenjoyment of the

Petitioners over 1 Bigha (1008 sq.yds.) land of the Petitioners comprised in khasra Nos.932/612 (O-8)937/614 (1-18), situated in revenue Estate of Village Maidan Garhi, NCT Delhi.

iii) pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice."

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 („LAA) was issued on 25 th November 1980, followed by declaration under Section 6 of the LAA on 7 th June 1985. The impugned Award No. 23/1987-88 was passed on 17th June 1987. There is no explanation in the petition for the inordinate delay in approaching the Court for relief.

3. In the counter-affidavit filed on behalf of the LAC, it is submitted that the possession of Khasra No. 932/612 (O-8) and 937/614(1-18) was taken and handed over to the DDA on 16th July 1987. It is also submitted that compensation with respect to the subject land has been paid to the original owners. In para 8 of the counter-affidavit, the details of the amount paid are reproduced below:

NAME	AMOUNT	REMARKS
Chander Singh	Rs. 83,292.99/-	Paid vide Ch. No. 82526 dated 14.09.87
Kartar Singh	Rs. 83,292.99/-	Paid vide Ch. No. 82523 dated 14.09.87
Dhaniram	Rs. 83,293/-	Paid vide Ch. No. 82528 dated 14.09.87

4. In the counter-affidavit filed by the DDA, it is submitted that the petition is barred by delay and laches. It is further submitted that as per the land records, the land bearing Khasra No.932/612 (O-8) and 937/614(1-18) was acquired for public purpose for the "planned development of Delhi". The physical possession of this land was handed over to the DDA by LAC on 16 th July 1987. It is submitted that the compensation was disbursed to surviving sons namely Shri Kartar Singh, Shri Chander Singh and Shri Dhani Ram of late Shri Lekhi Ram vide cheque no. 82527, 82526, 82528, dated 14.09.1987 for Rs.82,292.99, Rs.82,292.99 and Rs.83,293.00 respectively.

5. No rejoinder has been filed to the counter-affidavit of the DDA or the LAC. In any event, the assertion by the Petitioners that they continue to remain in possession of the land in question or that no compensation has been tendered 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 the relief.

6. 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."

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

8. The above observations have been followed by this Court in several orders including the order dated 17th 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.

9. Mr. Vasisht contended that since the 2013 Act became effective on 1 st January 2014, the cause of action to claim relief under Section 24 (2) arose only then. Therefore, according to him, the petition cannot be said to be barred by laches.

10. The facts in the present petition speak for themselves. The Award was passed on 17th June 1987 and possession of the lands in question was taken on 16th July 1987. For nearly three decades thereafter the Petitioners took no step to question the land acquisition proceedings. In the circumstances, the observations in para 130 of the decision in Indore Development Authority v. Shailendra (supra) that "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" would squarely apply in the present case.

11. 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.

S.MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 11, 2019 tr