

Pawan Kumar & Ors vs Union Of India & 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) 1770/2017

PAWAN KUMAR & ORS.

..... Petitioners

Through: Mr. Prashant Bhardwaj for Mr. Arvind Kr. Gupta, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anil Dabas with Mr. Praveen Kumar for UOI
Mr. Dhanesh Relan, Standing Counsel with Ms. Mrinalini Dharma for DDA
Mr. Yeeshu Jain, Standing Counsel and Ms. Jyoti Tyagi for L&B/LAC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VINOD GOEL

ORDER

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1. The prayers in the petition read as under:

"i) issue a writ of mandamus or any other appropriate writ, order or direction thereby, inter alia, declaring that acquisition proceedings in respect of the land belonging to the petitioners in Khasra No. 59(5-

15), 66 (2-10), 73 (0-13), 132 (5-14), 135(0-3), Village Saidulajab, Tehsil Mehrauli, New Delhi and 1/8thshare in land falling in Khasra No. 103 (1-7), 173 (1-2), 179 (2-1) and Khasra No. 157 (0-10), Village Saidulajab, Tehsil Mehrauli, New Delhi, have been lapsed on the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

ii) issue a writ or any other appropriate writ, order or direction thereby direct the respondents not to interfere in the peaceful possession of the petitioners qua the land subject matter of the present writ petition;

iii) Issue a writ and / or direction, whereby direct the respondents to mutate the half share in land falling in Khasra No. 59(5-15J,66 (2-

10),. 73 (0-13), 132 (5-14), 135 (0-3), Village Saidulajab, Tehsil Mehrauli, New Delhi and 1/8th share in land falling in Khasra No. 103 (1-7), 173 (1-2), 179 (2-1) and Khasra No.157 (0-10), Village Saidulajab, Tehsil Mehrauli, New Delhi, in favour of petitioners being the legal heirs of Sh. Dalip Singh;

iv) Any other relief, order or direction which this Hon'ble Court deems fit and proper may also be passed in favor of the petitioners."

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 („LAA) was issued on 13th November 1959, followed by declaration under Section 6 of the LAA on 10th November 1966. The impugned Award No. 149/86-87 was passed on 17th September 1986. 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 submitted that as per the land records, the land bearing Khasra No. 59 (5-15), 66 (2-10), 73 (0-13), 132 (5-14), 135(0-3), Village Saidulajab, Tehsil Mehrauli, New Delhi land falling in Khasra No. 103 (1-

7), 173 (1-2), 179 (2-1) and Khasra No. 157 (0-10), Village Saidulajab, Tehsil Mehrauli, New Delhi 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 23rd September 1986 and 17th July 1987 respectively. As regards compensation, in Para 7 of the counter affidavit, the DDA has stated;

"7. Compensation in respect of entire land stands duly paid vide statement through Revolving Fund remitted by the Central Government to the Land Building Department on account of compensation in respect of the land acquired during 1986-87 in the sum of Rs.100,00,00,000/- (Rupees one hundred crores) released by the Government to the Land & Building Department as Compensation towards the payment of compensation of 13 villages of South Delhi, including the land in question of Village Saidul Azaib."

4. No rejoinder has been filed to the counter-affidavit of the DDA. In any event, the assertion by the Petitioners that they continued to remain in possession of the land or that compensation was not tendered gives rise to disputed questions of fact which cannot possibly 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.

5. 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."

6. The above observations have been reiterated in the judgment of the three Judge Bench 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."

7. 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.

8. 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.

9. The interim order passed by this court on 28 th February 2017 which stood confirmed on 22nd January 2018 stands vacated.

S. MURALIDHAR, J.

VINOD GOEL, J.

FEBRUARY 8, 2019 mw