

(2020) 02 DEL CK 0502

In the Delhi High Court

Case No : Civil Writ Petition No. 2432 Of 2015

Brahm Prakash & Ors

APPELLANT

Vs

Lt. Governor Of Delhi & Ors

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Constitution of India, 1950 — Article 226
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)
Land Acquisition Act, 1894 — Section 4, 6, 31(1), 34

Citation : (2020) 02 DEL CK 0502

Hon'ble Judges : Vipin Sanghi, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Setu Niket, Garvit Saini, Siddharth Panda, Priyabrat Sahu, Chaintanya Sahu, Geeta Mehrotra

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. The Petitioners have filed the present petition under Article 226 of the Constitution of India, seeking declaration to the effect that the acquisition proceedings with respect to land of the petitioners comprised in Khasra Nos. 34/1(4-16), 34/2(3-7), 34/11 min. (I-0), 34/12(4-16), 35/5(1-16), 26/22 min.(I-4); 26/22 (1-12), 34/2(1-2), 34/26(0-7); 26/19(3-10), 26/20(0-10); 34/19 (4-16), 34/22/1(5-04), 74/3/2(2-8), 74/4(3-8); 25/15 (4-00), 25/4 min.(0-12), 25/5 min.(0-19), 25/7(2-18), 25/6 min.(4-3), 25/14(I-6); 3/12(0-18), 3/18 min. (2-8), 3/19(4-7), 3/22 min.(2-0), 3/23 min. (2-8); 33/1 (4-16), 33/12 min.(3-4), 33/19/1 min. (I-12), 33/20/I(2-08); 33/12 min.(I-12), 33/13(4-16), 33/18/1(2-6), 33/19/1(0-16), 33/14 min.(I-12), 33/17/1 min.(0-16); 51/3/2 min. (2-18), 51/4(4-16), 51/5(4-16), 51/6(4-16), 51/7(4-16),

51/8/2(2-4),34/9(4-16), 34/11(1-0), 34/20(2-0);50/16(4-16),
50/17(4-16),53/21(4-16),53/22(4-16)

in Village Holambi Kalan, Delhi (hereinafter â??the subject landâ?), acquired vide Supplementary Award No. 33A/2003-04 dated 31.03.2004, are

deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013 (hereinafter as â??the 2013 Actâ?).

2. The reliefs sought by the petitioners read as follows:

(a) Allow the present Writ Petition in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013 and in consequence thereof quash Award bearing No.33A/2003-04 dated 31/03/2004, Declaration u/s 6 of the said Act

dated 26/07/2002, and Notification dated 22/08/2001 u/s 4 of the Land Acquisition Act, 1894 thereby declaring the acquisition to be deemed to have

been lapsed;

(b) writ of Certiorari or any other appropriate writ, order or direction in the nature thereof, thereby quashing the Notification No.

F.10(4)/97/L&B/LA/7910 u/s 6 of the Land Acquisition Act 1894 dated 26/07/2002, award no. 33A/2003-04 dated 31/03/2004, and in consequence

thereof quashing NotificationNo.F.10(4)/97/L&B/LA/7329, dated 22/08/2001 under section 4 of the Land Acquisition Act, 1894;

(c) writ of Mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondents to denotify the lands of

the Petitioners bearing Khasra No.'s 34/1(4-16), 34/2(3-7), 34/11 min.(1-0), 34/12(4-16), 35/5(1-16), 26/22 min.(1-4); 26/22 (1-12), 34/2(1-2), 34/26(0-

7); 26/19 (3-10), 26/20(0-10); 34/19 (4-16), 34/22/1(5-04), 74/3/2(2-8), 74/4(3-8); 25/15 (4-00), 25/4 min.(0-12), 25/5 min.(0- 19), 25/7(2-18), 25/6 min.

(4-3), 25/14(1-6);3/12(0-18), 3/18 min. (2-8), 3/19(4-7), 3/22 min.(2-0), 3/23 min. (2-8);33/11(4-16), 33/12 min.(3-4), 33/19/1 min. (1- 12),33/20/1(2-08);

33/12 min.(1-12), 33/13(4-16), 33/18/1(2-6), 33/19/1(0-16), 33/14 min.(1-12), 33/17/1 min. (0-16);51/3/2 min.(2-18), 51/4(4-16), 51/5(4-16), 51/6(4-16),

51/7(4-16), 51/8/2(2-4),34/9 (4-16), 34/11(1-0), 34/20(2-0);50/16(4-16),50/17(4-16),53/21(4-16), 53/22(4-16) in Village Holambi Kalan, Delhi;

(d) Issue a writ of prohibition restraining the Respondents from dispossessing the Petitioners from their lands;

(e) Award appropriate costs in the facts and circumstances of the case.

(f) Any other or further order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be

passed/issued in favour of the Petitioners.â??

3. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter 'the LAA') was issued on 22.08.2001 and the declaration under

Section 6 of the LAA was issued on 26.07.2002. Subsequently, a Supplementary Award no. 33A/2003-04 dated 31.03.2004 was passed in respect of the subject land.

4. The challenge to the acquisition proceedings is on the surmise that the Petitioners are till date in possession of the subject land and the same has not been taken by the authorities.

5. Delhi Development Authority (DDA) - Respondent No. 3, in its counter affidavit, has submitted the physical possession of the same was handed

over to the DDA by LAC through L& B Department of Government of NCT of Delhi on 22/23.06.2004 and the same was transferred to ND-XII on

same day for the public purpose of development of freight complex at Narela. With regard to the compensation, it is contended that the Payment of

compensation for Supplementary Award no. 33-A/2003-04 was transferred to the L&B/LAC vide cheque dated 18.01.2005. DDA has also annexed

the possession proceedings dated 22.06.2004 alongwith the counter affidavit.

6. Petitioners, in their rejoinder to the counter affidavit of Respondent No. 2, have denied that the physical possession of the same was handed over to

the DDA. They have further denied that the subject land was transferred to ND-XII for development of freight complex at Narela under the Planned

Development of Delhi.

7. Land and Building Department- Respondent No. 3 and Land Acquisition Collector (LAC) - Respondent No. 3, in their common counter affidavit,

have submitted that the possession of the subject land was taken over for the public purpose of development of freight complex at Narela and handed

over to the beneficiary department on 23.06.2004 and 26.06.2004 and the compensation was also paid to the recorded owners.

8. Be that say it may, the Petitioners were queried about the delay in filing the present petition. However, no purposeful explanation has been tendered

in the petition to justify the inordinate delay in coming forward to challenge the present acquisition proceedings. The notification under Section 4 of the

LAA for the subject land was issued in 2001, whereas the present petition has been filed after almost 15 years. The petition is obviously barred by

laches.

9. The Supreme Court has dealt with the issue of delay and laches in Mahavir v. Union of India, (2018) 3 SCC 588,

in the context of the 2013 Act. The said judgment is unambiguous in emphasising that claims where there is total inaction are not meant to be revived

by the 2013 Act. The relevant observations of the Supreme Court in the said decision read as under:

“22. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want

to receive it, Section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of

compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to

receive compensation by willful act. The failure to deposit in court under Section 31(1) in such cases would attract only interest as

envisaged under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.

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.

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26. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24(2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years.â??

(emphasis supplied)

10. 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: -

â??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 negatived 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.â??

(emphasis supplied)

11. This Court has also dealt with the issue of delay and laches in the case of Mool Chand v. Union of India (W.P. (C) 4528/2015) dated 17th January

2019, wherein the Court while elaborating the decision of Mahavir v. Union of India, (2018) 3 SCC 588 and Indore Development Authority v.

Shailendra, (2018) 3 SCC 412, on the aspect of delay and laches, made the following observations:

34. The question then arises whether only the points of difference between the decisions in Pune Municipal Corporation (supra) and

Indore Development Authority v. Shailendra (supra) and all issues incidental thereto have been referred to the Constitution Bench? In this

context it requires to be noted that although several questions were framed in Indore Development Authority v. Shailendra (supra), it is only

on Question I, viz., on whether the deposit in the RD Account would amount to having tendered compensation for the purposes of Section 24

(2) of the 2013 Act, that there was a difference of opinion between the view expressed in the two decisions viz., Pune Municipal

Corporation (supra) and Indore Development Authority v. Shailendra (supra).

35. The other point of difference was that arising in Yogesh Neema v. State of MP (supra) where the correctness of the decision in Sree

Balaji Nagar Residential Association v. State of Tamil Nadu (supra) as regards exclusion of the period covered by the interim orders from

the calculation of the period of five years under Section 24 (2) of the 2013 Act was questioned. On this point the three-Judge Bench in

Indore Development Authority v. Shailendra (supra) unanimously overruled the decision in Sree Balaji Nagar Residential Association v.

State of Tamil Nadu (supra). On this issue no subsequent Bench of the Supreme Court of co-ordinate strength appears to have taken a

contrary view. It is doubtful, therefore, whether this issue would be examined by the Constitution Bench.

36. Relevant to the issue on hand, there was no difference of view qua Question III addressed in Indore Development Authority v.

Shailendra (supra) i.e. â??Whether section 24 of Act of 2013 revives barred and stale claims?â? On this question there was no view (much

less a contrary view) expressed in Pune Municipal Corporation (supra) or for that matter in any other subsequent decision of a smaller, co-

ordinate or even larger Bench of the Supreme Court. This question, therefore, was not the subject matter of reference before the

Constitution Bench.

37. Consequently, this Court is of the view that although the order passed by the Constitution Bench refers to â??all the aspectsâ? being

considered by the Constitution Bench, that expression would not include

questioning the correctness of the decision of the three-Judge

Bench in Indore Development Authority v. Shailendra (supra) as far as it holds by a unanimous opinion that Section 24 (2) of the 2013 Act

cannot revive old and stale claims.

(emphasis supplied)

12. Similar orders have been passed in several other cases, such as in the case of Sushma Purthi v. Union of India (W.P. (C) 586 of 2016) dated 31st

January 2019, Krishan v. Union of India (W.P. (C) 4919 of 2014) dated 25th January 2019, Mohd. Mian v. Union of India (W.P. (C) 2702/2019) dated

5th February 2019. The aforementioned cases have been dismissed by this court on the ground of delay and laches. Challenge against these judgments

have been dismissed by the Supreme Court vide SLP (C) No. 11481/2019, SLP (C) No. 13423/2019 and SLP (C) No. 8848/2019, respectively.

13. Thus, in view of the foregoing discussion, the present petition is not maintainable on merits as well on the ground of delay and laches. Accordingly,

the present petition is dismissed. Interim order stands vacated.