

(2019) 08 DEL CK 0404

In the Delhi High Court

Case No : Civil Writ Petition No. 5184 Of 2017

Dr. Vandana Goel

APPELLANT

Vs

Governor Of Delhi & Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 6, 31, 31(1), 34

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2019) 08 DEL CK 0404

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

Bench : Division Bench

Advocate : Jayant Mehta, Rizwan, Abhishek Kaushik, Apporv Singhal, Sameydeen, Vaibhav Agnihotri, Vinayak Harshvardhan, Vidhi Agarwal

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. The present petition under Article 226 of the Constitution of India, inter alia seeks a writ direction, declaring that the acquisition proceedings qua the land admeasuring 5 bighas and 13 biswas comprising Rectangle No. 25 Killa No.9 min. South (2-08), Rectangle No. 25 Killa No.9 min North(2-07), Rectangle No. 25 Killa No.2 min South(0-18) situated in Revenue Estate of Village Deoli, Tehsil Mehrauli, New Delhi (hereinafter 'Suit property'), forming the subject matter of the present petition, have lapsed.

2. It is stated in the Petition that Mr. Ashok Muthana, was the recorded owner of the suit property. The above noted property was mortgaged with a bank. Subsequently, due to Mr. Muthana's failure to repay the loan, the bank enforced the mortgage and issued a public notice for auction of the said property under the provisions of the SARFAESI Act, 2002. The proceedings under the Securitisation Act reached the Supreme Court and it was directed that the

auction sale be conducted under supervision of the Company Court. Thereafter, on 26th September 2011, the bank conducted a public auction and Petitioner was declared the successful bidder, who was handed over possession and sale certificate of the suit property on 31st January 2012. Subsequently, Petitioner made a request for mutation of the land in her favour and in this regard when Petitioner made enquiries from the Sub-Registrar, she was apprised of the fact that the suit property has been acquired under the Land Acquisition Act, 1894 initiated vide Section 4 notification dated 25th November 1980. Petitioner has also annexed copy of the reply of the Tehsildar dated 9th April 2015, to this effect, received by her in furtherance of an RTI application. As per government records, the suit property is still in the name of Ashok Muthana.

3. Petitioner contends that owing to promulgation under Section 4 and Section 6 of the repealed Land Acquisition Act, 1894 (hereinafter "LAA") the mutation is pending. It is also pleaded that notwithstanding the acquisition proceedings, the possession for the suit property has not been taken over and the compensation of the land has not been paid to the Petitioner, nor deposited in the Reference Court as per Section 31 of the LAA. Therefore, Petitioner is entitled for a declaration 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'), to the effect that the acquisition proceedings in respect of the subject land has lapsed. The prayers made in the petition read as under:

"(a) writ of Certiorari or any other appropriate writ, order or direction in the nature thereof, declaring as lapsed, the notifications issued under section 4 of the Land Acquisition Act, vide Notification No. F.9(16)/80 L & B dated 5-11-1980 and Declaration issued under Section 6 vide Notification No. F-9(23)/85 L & B dated 06.06.1985 to acquire the said lands, bearing Khasra Nos. 25/2 & 25/9 admeasuring 5 bighas & 13 biswas comprising Rectangle No. 25 Killa No.9 min. South (2-08), Rectangle No. 25 Killa No.9 min North(2- 07), Rectangle No. 25 Killa No.2 min South(0-18) situated in Revenue Estate of Village Deoli ,Tehsil Mehrauli New Delhi.

(b) 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 petitioner bearing Khasra Nos. 25/2 & 25/9 admeasuring 5 bighas & 13 biswas comprising Rectangle No. 25 Killa No. 9 min. South (2I 08), Rectangle No. 25 Killa No.9 min North(2-07), Rectangle No. 25 Killa No. 2 min South(0-18) situated in Revenue Estate of Village Deoli ,Tehsil Mehrauli New Delhi;

(c) writ of Mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the respondents to mandate the registrar to register the purchase made by the petitioner in the Auction sale from bank & to direct the Tehsildar to mutate property in petitioner's name.

(d) Award appropriate costs in the facts and circumstances of the case;

(e) Any other or further order or direction which this Court may deem fit and proper in the facts and circumstances of the case be passed/ issued in favour of the petitioner."

4. It is undisputed that in the present case, the Notification under Section 4 of the LAA was issued on 5th November 1980 followed by a declaration under Section 6 of the LAA on 6th June 1985, for public purpose namely for "Planned Development of Delhi". Thereafter, an Award bearing No. 19/87-88 was rendered on 5th June 1987.

5. In response to the petition, an affidavit has been filed by the Addl. District Magistrate on behalf of Respondent Nos. 1 and 3, stating that on account of the interim orders passed by this Court in petitions filed by some of the persons interested in the land being acquired, which interim orders were in operation till 2005, possession of the land in question could not be taken. It is pointed out that this Court in one set of writ petitions decided the issue in favour of those Petitioners, and quashed the land acquisition proceedings whereas, in another set it decided against them. The appeals filed by the land owners who had failed in this Court were dismissed by the Supreme Court in *Om Parkash v. Union of India* (2010) 4 SCC 17. The appeals filed by the Government of India were also dismissed by the Supreme Court in *Union of India v. Shiv Raj* (2014) 6 SCC 564. Further, it is stated that compensation amount was deposited in Recurring Deposit ('RD') in the name of Ashok Mutana. The Respondents contend that due to stay granted by the High Court, the possession of the subject land could not be taken over. The possession in small patches would not have fulfilled the purpose of the acquisition. Relying upon *Abhay Ram v. Union of India*, (1997) 5 SCC 421 it is further contended that since the notification was stayed in one proceeding it resulted in stay of entire acquisition proceedings. Lastly, it is submitted that Section 24 of the 2013 Act is not applicable to the facts of the present case.

6. Petitioner in its rejoinder to the Counter affidavit, submits that Respondents have deliberately concealed the fact that amount of compensation deposited in RD in the name of Ashok Muthana was for Award of Ambarhai & Kakrola village. Relying on the judgment of Supreme Court in *Abhay Ram v. Union of India*, (supra) it is stated that the challenge by the land holders to the declaration issued under Section 6 of the LAA in the present case, was dismissed in 1997. Since then the LAC/L&B department has failed to take physical possession of the suit land. Hence, Section 24 of the 2013 Act is applicable to the present case.

7. Whether compensation was deposited in the account of the erstwhile land owner for the suit property or not, is a disputed question of fact in view of the contrary stand taken by Respondent No. 1 and 3 in its counter affidavit. This disputed question of fact cannot be gone into under writ jurisdiction of this Court. It is also apposite to mention that this Court vide judgment dated 8th February 2019, *Gurmeet Singh v. Union of India* (W.P. (C) 10201/2015), dismissed a similar case pertaining to the land acquisition proceedings and notifications that

are subject matter of the present petition.

8. Be that as it may, there is no explanation whatsoever offered in the petition for the inordinate delay in coming forward to seek relief under Section 24 (2) of the 2013 Act. The Award for the subject land was passed in 1987, whereas the present petition has been filed after almost three decades and no other steps have been taken by the Petitioner or her predecessor in interest. The petition is obviously barred by laches.

9. After the passing of the 2013 Act, the Petitioner has approached this court claiming that she is in possession of the land in question. There is no document annexed with the Petition or any averment made by the Petitioners that would even remotely indicate that she or the erstwhile owner continued to remain in possession. There is no explanation whatsoever in the petition for the inordinate delay in the Petitioner coming forward to seek relief under Section 24 (2) of the 2013 Act. What is significant also is that there is no averment in the petition that the recorded owner - Ashok Muthana, challenged the acquisition proceedings concerning the land in question. The Petitioner who has purportedly acquired rights in respect of the suit property, much later under an auction, cannot be permitted to raise a plea contrary to the rights of his pre-decessor-in-interest that stood crystallized by virtue of the acquisition proceedings, and the failure on his part to take any action to challenge the same. The Supreme Court has also dealt with 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 that are barred, and 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.

25. xxx xxx xxx

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."

(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:-

"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."

(emphasis supplied)

11. Petitioner has placed reliance on the decision of the Supreme Court in *Govt. of NCT of Delhi v. Manav Dharam Trust*, (2017) 6 SCC 751 to contend that Supreme Court has recognized the entitlement of subsequent owners to claim compensation in paragraph 28 of the judgment, which reads as under:

"28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi."

12. There is no dispute with regard to the said proposition of law. The right of a subsequent purchaser to claim compensation is well recognized, however, no fresh right would accrue in her favour if the same is barred on account of delay and laches attributable to her predecessor-in-interest. Petitioner has stepped into the shoes of her predecessor in interest, and can exploit only such rights that would have accrued in the favour of the erstwhile owner. She is also bound by the acts of omission and commission of her pre-decessor-in-interst, and cannot seek to assert an independent right or claim. Concomitantly, exercise of such rights would also have to be tested on the anvil of the bar under law, if any, that is applicable to the enforcement of rights by the erstwhile owner. The issue before this Court in the present case is with regard to the delay and laches on part of the Petitioner which would relate back to the predecessor in interest. This

Court has 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 (supra) and Indore Development Authority (supra), 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. "Whether section 24 of Act of 2013 revives barred and stale claims?" 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 "all the aspects" 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)

13. On the basis of the decision in Mool Chand (supra) this Court passed similar decisions vide judgment dated 31st January 2019 in W.P. (C) 586 of 2016

(Sushma Purthi v. Union of India), 25th January 2019 in WP (C) 4919 of 2014 (Krishan v. Union of India), 5th February 2019 in W.P. (C) 2702/2019 (Mohd. Mian v. Union of India), dismissing similar petitions seeking a declaration under Section 24(2) of the 2013 Act, on the ground of delay and laches. Challenge against all 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. It also needs to be emphasized that this court has dismissed several other petitions on the ground of delay and laches and challenge against these decisions, before the Supreme Court, has also been dismissed.

14. Following the aforementioned decisions and in the light of the facts and circumstances listed out hereinbefore, the Court dismisses the present petition both on the ground of laches as well as merits.