

(2019) 12 DEL CK 0426

In the Delhi High Court

Case No : Civil Writ Petition No. 13538 Of 2019, Civil Miscellaneous Application No. 54838, 54839 Of 2019

Jagjeet Singh

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Constitution Of india, 1950 — Article 226
Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 11(4), 24, 24(2)
Land Acquisition Act, 1894 — Section 4, 6, 31(1), 34

Citation : (2019) 12 DEL CK 0426

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

Bench : Division Bench

Advocate : S.D. Baloni, Shobhana Takiar, Shweta Anand

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. The Petitioner has filed the present petition under Article 226 of the Constitution of India, seeking declaration to the effect that the acquisition proceedings in respect to land of the petitioner comprised in Khasra No. 820 min (0-8), 816 min (1-17) and 821 min (2-12), situated at Village- Satbari, (Ansal Villas), Mehrauli, New Delhi-110030 i.e. total area of 4 Bigha 17 Biswa (hereinafter "the subject land"), acquired vide Award bearing No. 14/1987-88 dated 26th May 1987, 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 "the 2013 Act").

2. Though the Petitioner is not the recorded owner, he claims ownership over the subject land by virtue of a General Power of Attorney (GPA) dated 04th November 2016 and a registered Will of same date. It is averred that the Petitioner is the sole and absolute owner of the subject land and is in actual

physical possession of the subject land thereof on the basis of the aforementioned documents. Petitioner has based its challenge to the acquisition proceedings on the ground that authorities have failed to take possession of the subject land and that he continues to be in possession till date. It is also claimed that neither the Petitioner nor the erstwhile recorded owners of the subject land have been paid compensation despite the erstwhile recorded owners having filed their claims.

3. In the present case, the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter 'the LAA'), was issued on 25th November 1980 and declaration under Section 6 of the LAA on 25th May 1985. Subsequently, an Award dated 26th May 1987, bearing no. 14/1987-88 was passed in respect of the land situated in revenue estate of Village- Satbari, (Ansal Villas), Mehrauli, New Delhi-110030.

4. It is evident from the factual narration in the petition that the Petitioner had allegedly acquired ownership on 04th November 2016, post issuance of Section 4 notification. Recently, Supreme Court in Shiv Kumar v. Union of India, 2019 SCC OnLine SC 1339, has held that purchasers of land post issuance of Section 4 notification, do not acquire a proper title, such transactions are void ab initio and subsequent purchasers have no right to challenge the acquisition proceedings under Section 24(2) of the 2013 Act. The relevant portion of the aforesaid decision reads as under:

"14. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the Policy.

15. When we ponder as to beneficial provisions of the Act of 2013, they also intend to benefit landowners mentioned in the notification under Section 4, not for the benefit of such purchasers who purchase the land after it has been vested in the State.

16. Sub-section 4 of Section 11 of the Act of 2013, which is akin to section 4 of the Act of 1894, contains a prohibition that no person shall make any transaction or cause any transaction of land or create any encumbrance on land from the date of publication of such notification. Section 11(4) is extracted hereunder:

"11. Publication of preliminary notification and power of officers thereupon.-

x x x x x

(4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed:

Provided that the Collector may, on the application made by the owner of the

land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this subsection:

Provided further that any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector."

17. Without seeking exemption from the Collector, there is a total prohibition on any transaction of land. Whereas the legal position under the Act of 1894 was that a transaction effected after section 4 notification was illegal and void.

*** **

27. Even otherwise, proviso to Section 24(2) does not recognize a purchaser after Section 4 notification inasmuch as it provides that where an award has been made, and the compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition issued under the Act of 1894, shall be entitled to compensation under the provisions of the Act of 2013. The proviso makes it clear that in case of compensation concerning the majority of landholding has not been deposited, then recorded owner(s) at the time of issuance of notification under section 4 of the Act of 1894 shall have the right to receive the compensation. Purchasers after section 4 notification have not been given the right to receive the higher compensation under the provisions contained in the act of 2013.

28. The Act of 2013 presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after section 4 notification as sale deed is void under the Act of 1894, cannot claim rehabilitation and resettlement as per policy envisaged under the Act of 2013, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to section 24(2) under the Act of 2013. An original landowner cannot be deprived of higher value under the Act of 2013, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under proviso to Section 24(2) on recorded owners under Act of 1894. We have come across instances in which after notifications under section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the Act of 2013 as it is to be given to the owner as mentioned in the notification.

29. Given that, the transaction of sale, effected after section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim ?possession? and challenge the acquisition as having lapsed under section 24 by questioning the legality or regularity of proceedings of taking over of possession under the Act of 1894. It would be unfair and profoundly unjust and against the policy of the law to permit

such a person to claim resettlement or claim the land back as envisaged under the Act of 2013. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.

30. Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 cannot be made, based on a void transaction nor declaration can be sought under section 24(2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the Act of 2013 is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the Act of 2013. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

*** **

33. The intendment of Act of 2013 is to benefit farmers etc. Subsequent purchasers cannot be said to be landowners entitled to restoration of land and cannot be termed to be affected persons within the provisions of Act of 2013. It is not open to them to claim that the proceedings have lapsed under Section 24(2).

*** **

35. No right can be claimed based on a transfer made by way of execution of Power of Attorney, Will, etc., as it does not create any interest in immovable property."

(Emphasis supplied)

5. Thus, Petitioner being a subsequent purchaser is not entitled to reap benefits of the beneficial provisions under the 2013 Act. The transaction entered by Petitioner is void ab initio, and do not confer any right or title in his favor. Hence the claim raised by Petitioner is not maintainable and is liable to be dismissed in limine on this ground alone.

6. Even otherwise, on a careful perusal of the petition, it emerges that no valid title documents have been annexed with the petition. The only documents placed on record are the GPA and Will, which do not create any interest in favor of the Petitioner in the subject land. Thus, the Petitioner does not have lawful ownership to seek the relief sought in the present petition and the same is liable to be dismissed on this ground as well.

7. The Supreme Court in Shiv Kumar (supra), inter alia also made observations

qua the legality of the title claimed on the basis of Agreement to Sell, Will, GPA, etc. which is evident from the following extract:

"39. Concerning the illegal colony, averments have been made that the colony is an unauthorized and provisional order was passed to regularise it. The plea taken is contradictory and shows the falsity of the claim raised by the purchasers. That, apart predecessors of the purchaser obtained the land-based on Power of Attorney, Agreement to Sell, and Will on 9.12.1982. As per averments made in the writ application, Bijender Singh, who was owning ½ share, sold the share to Satya Narain by the documents like Agreement to Sell, Power of Attorney, or Will. It has also been averred that Om Prakash sold the remaining ½ share to Satya Narain on 11.3.1984 by way of Agreement to Sale, Power of Attorney, or Will. The purchase made through Agreement to Sale, Power of Attorney, or Will by Satya Narain did not confer a title upon him to transfer it to the purchasers apart from the fact that it was void in view of purchase after Section 4. Based on purchase made from such owners whose title was not perfect, purchasers had no derivative title in the eye of law. There was no legally recognized title deed in favor of Satya Narain."

(Emphasis supplied)

8. The Petitioner was 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 Award for the subject land was passed in 1987, whereas the present petition has been filed after more than three decades. The petition is obviously barred by laches.

9. The Supreme Court has 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 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.

*** **

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 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."

(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. "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)

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 aforementioned decision(s) and foregoing discussion, the present petition is not maintainable on merits as well on the ground of delay and laches. Accordingly, the petition along with the pending applications is dismissed in limine.