

(2019) 09 DEL CK 0304

In the Delhi High Court

Case No : Civil Writ Petition No. 3071 Of 2016

Laxman Singh

APPELLANT

Vs

Land Acquisition Collector/A.D.M. & Ors

RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 17, 31, 31(1), 34
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2019) 09 DEL CK 0304

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

Bench : Division Bench

Advocate : Pankaj Vivek, Sanjay Kumar Jha, Sunil Kumar Jha, M.S. Akhtar, Digvijay Rai, Aman Yadav, Dhanesh Relan

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. The present petition has been filed seeking the following reliefs:

"a). Issue a writ of certiorari or any other similar writ, order or direction for declaring the Award no. 28/1987-88 dated 23.12.1987 in pursuance to the Notification No. F.7(2)/86-L&B(i) dated 23/12/86 under Section 4 of the Land Acquisition Act, 1894 and Notification No. F.7(2)/86-L&B(ii)&(iii) dated 24/12/1986 under Section 6 & 17 of Land Acquisition Act, 1894 w.r.t. land bearing Kh.No. 1978/2 (1-12), 1981 (4-16), 1984 (6-7), 1985 (5-1),1986/2 (1-9), 1987/1 (4-1), 1987/2 (4-4), 1987/3 (0-12),1988/2 (4-18), total measuring 33 Bighas situated in village Malikpur Kohi @ Rangpuri, New Delhi as having lapsed; and

b). Pass such other and /further orders as deemed fit and proper in facts of the present case, in favour of the petitioners."

2. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter

'the LAA'), was issued on 23rd December 1986 and declaration under Section 6 and Section 17 of the Act was issued on 24th December 1986. Subsequently, an Award dated 23rd December 1987, bearing no. 28/1987-88 was passed in respect of land situated at village Malikpur Kohi alias Rangpuri including the land of the Petitioner.

3. After the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter 'the 2013 Act'), Petitioner has filed the present writ petition, seeking a declaration under Section 24(2) of the 2013 Act, to the effect that the land acquisition proceedings in respect of Award bearing No. 28/1987-88, are deemed to have lapsed since the Award was made more than five years prior to the commencement of this Act and neither the compensation has been paid to Petitioner nor the possession of the subject land has been taken over by the authorities.

4. The Land Acquisition Collector (LAC)/A.D.M.- Respondent No. 1, in the counter affidavit, at the outset has challenged the maintainability of the present petition on the ground of delay and laches. It is the stand of the LAC that possession of the subject land was taken on 29th January 1987 and was handed over to the requisitioning department. Regarding payment of compensation, it is the stand of the LAC that, compensation has been paid to the recorded owners of the subject land, as per details provided in paragraph 7 of the Counter affidavit, as follows:

Recorded Owner

Date of payment

Details of Compensation paid.

Shri Jagdish Suri, S/o Shri Kashmiri Lal

15th July 1988

Rs. 35,707.23, vide cheque. No. 713115

Smt. Bhalla Rani, W/o B.S. Bhatnagar

Rs. 17853.62, vide cheque no. 713128

Shri Baldeo Singh, S/o Dhani Ram

27th July 1988

Rs. 17,853.61, vide cheque no. 713129

Smt. Pratima Kakkad, W/o Yashpal Kakkad

9 th August 1988

Rs. 17,853.62, vide cheque no. 713146

Smt. Sunita Kakkad, W/o Sudhir Kakkad

27th June 1988

Rs. 1,785.62, vide cheque no. 708292

Smt. Saneh Gandhi, W/o R.B. Gandhi

21st June 1988

Rs. 35707.24, vide cheque no. 708793

5. Delhi Development Authority (DDA)- Respondent No.2, in its counter affidavit, has challenged the maintainability of the present petition on the ground that the Petitioners have not placed any documents to show title and possession over the subject land. Further, it is stated that possession of the subject land was taken and had been handed over to the Airport Authority of India (Erstwhile, International Airport Authority of India), on 29th January 1997.

6. Airport Authority of India (AAI) - Respondent No. 5 in its counter affidavit have submitted that, the possession of the subject land was taken over by LAC on 29th January 1987, and handed over to it, on the same date. It is also stated that, compensation for the subject land has been paid and some of the affected land owners were even paid enhanced compensation in respect of their lands acquired under the present acquisition proceedings.

7. Petitioner in its rejoinder to the counter affidavit of Respondent No. 5 has contended that, physical possession of the land was never taken and compensation for the same was not paid to him. It is sought to be contended that payment to the LAC does not amount to compensation in terms of Section 31 of the 1894 Act.

8. At the outset learned counsel for the Petitioner has been queried about the delay in filing the present petition. However, no purposeful explanation has been tendered, either in the petition or in the rejoinder affidavit, 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, after the passing of the 2013 Act. 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 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. 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. 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.

13. 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.