

(2019) 02 DEL CK 0191

In the Delhi High Court

Case No : Civil Writ Petition No. 11415 Of 2018

Mahender Singh

APPELLANT

Vs

Land Acquisition Collector

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 11
Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2019) 174 DRJ 372

Hon'ble Judges : S. Muralidhar, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : S.S. Dahiya, J.S. Dahiya, Nisha Dahiya, Yeeshu Jain, Jyoti Tyagi, Gigi C. George

Final Decision : Dismissed

Judgement

Dr. S. Murlidhar, J

1. The prayers in the present petition read as under:

"(i) A writ of Mandamus by declaring the Award No. 20/2005 06/DC (NW) dated 18.11.2005 lapsed qua the Khasra No. 7 of petitioner in terms of section 24 (2) of Act 2013 as neither the compensation has been paid to the petitioner nor possession has been taken over of the subject land;

(ii) A writ of certiorari for quashing the impugned order No. F. LAC (NW)/UER-11/2018/ 1020-1025 dated 10-09-2018 qua the Khasra No. 7 total area comes to 13 Bighas 09 Biswa.

(iii) A writ of prohibition for restraining the respondent not to carry out further demolition and take possession of land without the sanction of law;

(iv) A writ of Mandamus by declaring the Khasra No. 7 of the petitioner as private land in terms of notification No. F.No. 1-33/UC/UD/

Policy/2007/20670-20686 dated 12-12-07;.

(v) And/or pass any other writ/ order/ direction as the Hon'ble court deem fit and proper in the facts and circumstances of the case."

2. The admitted facts are that the notification under Section 4 of the Land Acquisition Act, 1894 (LAA) was issued on 21st March 2003 followed by declaration under Section 6 LAA on 19th March 2004. The impugned Award No. 20/ 2005-06/DC was passed on 18th November 2005. The case of the Petitioner is that he has not received any compensation and still remains in possession of the land in question and therefore is entitled to the relief under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("2013 Act").

3. In the petition it is stated that on 20th September 2018, the Respondent without issuing any notice to the Petitioner, demolished the boundary wall as well as the constructed built-up area which had 17 rooms. Photos of the allegedly demolished property have been enclosed along with the petition. This was in furtherance of the impugned order dated 10th September 2018, by which the subject land was transferred to the National Highways Authority of India (NHAI) "for the Development of NH-344 (UER-II)". The same order has been relied upon to contend that the possession of the land was not taken and continued to vest with the Petitioner. Although in the prayer clause the Petitioner appears to be claiming relief in relation to a total area of 13 bighas and 9 biswa of land, in para 14, his grievance is that the Respondents took forcible possession of land admeasuring 6 bigha and 1 biswa. This contradiction, though pointed out during the course of hearing, has not been explained by the counsel for the Petitioner.

4. In the list of dates as well as in para 7 of the writ petition, the Petitioner has referred to a notification dated 12th December 2007 issued by the Urban Development Department of the Government of the NCT of Delhi, in relation to the regularization of unauthorized colonies and has averred as under:

"The Urban Development Department by its notification No.F.No. 1-33/UC/UD/ Policy/ 2007/20670-20686 dated 12-12-07 held that as per revised guidelines 2007 for regularization of unauthorized colony in Delhi, the Govt. is pleased to define the Government/ Public. So, even by virtue of above said notification the respondent cannot acquire the subject land and take over the physical possession of the land as no compensation of the subject acquired land has been paid and the physical possession of the land is still with the petitioner."

5. At the hearing of this petition on 23rd October 2018 learned counsel for the Land Acquisition Collector ('LAC') stated that possession of the land in question was still with the Delhi Development Authority ('DDA'). Mr. S.S. Dahiya, learned counsel for the Petitioner, however, pointed out that on 28th September 2018, possession of the land in question was taken over by the LAC. The Court then required the Respondents to clarify the position on the next date.

6. Today learned counsel for the LAC points out that the land was initially acquired for the public purpose of the Rohini Residential Scheme and possession was handed over to the DDA. On the other hand, Mr. Dahiya states that despite the avowed purpose being the Rohini Residential Scheme, the letter dated 10th September 2018 from the LAC to the Land & Building Department (Annexure P-1) showed that possession of the land was handed over to the NHAI for a 100 feet road that was part of NH-344. Therefore, such handing over was illegal and arbitrary.

7. Mr. Dahiya referred to the decisions in *Pune Municipal Corporation v. Harakchand Misirimal Solanki* (2014) 3 SCC 183, *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* (2015) 3 SCC 353 and the decision of this Court in *Ishwar Singh v. Union of India* 242 (2017) DLT 131 (DB). He urged that the prayer in terms of Section 24 (2) of the 2013 Act should be allowed.

8. For more than one reason, the prayer of the Petitioner cannot be acceded to. The first is that the petition is barred by laches. Even according to the Petitioner, the Award under Section 11 LAA was passed on 18th November 2005. In para 12 of the writ petition it is averred that the Petitioner was paid compensation in terms of the said Award in respect of Khasra Nos. 27, 42, 43 and 46, but not in respect of land in Khasra No.7. This shows that the Petitioner did accept the Award but took no steps to follow up on the compensation for Khasra No.7. It is another matter that the Petitioner does not explain anywhere in the petition how he is entitled to compensation for Khasra No.7.

9. There is no explanation offered by the Petitioner for not approaching the Court for the relief of compensation for over a decade since the passing of the Award except stating that possession was taken on 28th September 2018 by the LAC. In *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 the Supreme Court 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 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."

10. It may be noted here that the reference made by a Constitution Bench in *Indore Development Authority v. Shyam Verma* (2018) 4 SCC 405 regarding the correctness of the aforesaid decision in *Indore Development Authority v. Shailendra* (*supra*) is only as regards the extent to which it differs from the earlier view of the Supreme Court in *Pune Municipal Corporation v. Harakchand Misrimal Solanki* (*supra*) regarding the tendering of compensation, and not on the question of petitions seeking declaration under Section 24 (2) of the 2013 Act being barred by laches. This legal position was explained by this Court recently in its decision dated 17th January 2019 in *W.P. (C) 4528 of 2015 (Mool Chand v. Union of India)*.

11. The decisions relied upon by Mr. Dahiya were rendered prior to the decision of the three-Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* (*supra*) and did not touch upon the aspect of laches. They are, therefore, of no assistance to him. The resultant position is that the petition should be dismissed on the ground of laches alone.

12. The second reason is that the Petitioner has not pleaded relevant facts to support his plea for relief in terms of Section 24 (2) of the 2013 Act. The contradictory statements in relation to the extent of land stated to be in the Petitioner's possession has been adverted to in para 3 above. Further, if in terms of the impugned Award, the land was acquired for public purposes of the Rohini Residential Scheme, then by virtue of the order dated 18th October 2016 of the

Supreme Court of India in SLP (C) Nos. 16385-16388 of 2012 (Rahul Gupta v. DDA) even if on the date of the said order of the Supreme Court, actual physical possession was not with the DDA, if such physical possession was not handed over to the DDA within ten days thereafter, the DDA would be deemed to be in possession of the lands in question. Therefore even on the Petitioner's own showing, the factual position regarding possession is not clear. In the circumstances, it is not possible to grant the Petitioner relief under Section 24 (2) of the 2013 Act.

13. Thirdly, it is not clear why the Petitioner has adverted to the notification dated 12th December 2007 issued by the Urban Development Department of the GNCTD regarding regularization of unauthorized colonies. If this is because the land in question is part of an unauthorized colony, then that would be an additional ground for refusing the relief under Section 24 (2) of the 2013 Act. The legal position in this regard has been explained by this Court in *Mool Chand v. Union of India* (supra).

14. For all of the above reasons, this writ petition is dismissed both on the ground of laches as well as on merits.