

(2019) 10 DEL CK 0256

In the Delhi High Court

Case No : Civil Writ Petition No. 3634 Of 2016 & Civil Writ Petition No. 3656 Of 2016

M/S. Santur Construction & Finance (P) Ltd

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 09-10-2019

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24, 24(2), 31(1), 34
L And Acquisition Act, 1894 — Section 4, 6
Delhi Land (Restriction of Transfer) Act, 1972 — Section 3, 4

Citation : (2019) 10 DEL CK 0256

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

Bench : Division Bench

Advocate : M.P. Bhargava, Yeeshu Jain, Jyoti Tyagi, Sapna Chauhan, Sunita Ojha, J. Priyadarshini

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. Petitioner has filed the present writ petition, seeking a declaration under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter "the 2013 Act") that, the land acquisition proceedings in respect to land admeasuring 1 Bigha 5 Biswas of land comprised in Khasra No.1442/2, situated in revenue Estate of Village Chattarpur, Tehsil Hauz Khas, New Delhi (hereinafter as "subject land"), was acquired vide Award bearing No.15/1987-88 dated 5th June 1987, are deemed to have lapsed.

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

"(i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to 1 Bigha 5 Biswas of land comprised in Khasra No. 1442/2, situated in revenue Estate of Village

Chattarpur, Tehsil Hauz Khas, New Delhi having lapsed and further quashing the impugned notification No. F.9(16)/80-L&B dated 25.11.1980 issued under section 4, Notification No.F.9(26)/85-L&B dated 07.06.1985 issued under Section 6 of the Land Acquisition Act, 1894 and the Award no. 15/87-88 dated 05.06.1987 with respect to 1 Bigha 5 Biswas of land comprised in Khasra No.1442/2, situated in revenue Estate of Village Chattarpur, Tehsil Hauz Khas, New Delhi.

AND

(ii) issue a writ of mandamus and/or any other writ, order and direction of the similar nature issuing directions to the Respondents not to disturb or hinder the possession and enjoyment of the Petitioner over 1 Bigha 5 Biswas of land comprised in Khasra No.1442/2, situated in revenue Estate of Village Chattarpur, Tehsil Hauz Khas, New Delhi.

(iii) pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice."

3. The subject land forms part of a large chunk of land admeasuring 50,000 bigha including Village Chattarpur, Delhi which was sought to be acquired vide notification dated 25th November 1980 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter 'the LAA') and a declaration under Section 6 of the LAA was issued on 7th June 1985 for the purpose of "Planned Development of Delhi". Subsequently, an Award dated 5th June 1987, bearing no. 15/87-88 was passed in respect of land situated revenue Estate of Village Chattarpur, Tehsil Hauz Khas, New Delhi.

4. The challenge to the acquisition proceedings is on the surmise that the Petitioner or its predecessor-in-interest has neither been paid compensation nor the possession of the subject land has been taken by the authorities.

5. It is the stand of the Delhi Development Authority (DDA) - Respondent No. 3, in its counter affidavit, that the land acquisition proceedings have become final. Further, it has challenged the locus standi of the Petitioner to file the present petition on the ground that the Petitioner cannot claim title over the subject land through the sale deed dated 28th August 1991. The transfer of land, after issuance of the declaration under section 6 of the LAA and passing of the award, is barred under section 4 of the Delhi Land (Restriction of Transfer) Act, 1972 and the Petitioner being a subsequent purchaser has no locus to maintain the present petition. It has further stated that it has already made a payment to the tunes of Rs. 100 crores to the Land and Building Department /LAC for the land acquired vide Award No.15/87-88. It has also stated that question of entitlement of petitioner with respect to the subject land is a disputed question of fact and the same cannot be gone into in the writ jurisdiction. The present petition is not maintainable and is liable be dismissed summarily.

6. Land Acquisition Collector (LAC) - Respondent No. 5, in its counter affidavit, has stated that the present writ petition is liable to be dismissed as the Petitioner

is not the recorded owner of the subject land. The claim of Petitioner being a subsequent purchaser on the basis of an unregistered sale deed is implausible. An unregistered sale deed cannot confer title of the subject land on the Petitioner, as his name never got mutated in the revenue records. Regarding compensation, it has averred that an amount of Rs. 2,15,114.41 and Rs. 1,97,123.28 was deposited with the Revenue Department on 29.03.1988 in the name of Belayato Devi D/o Duli Chand and Smt. Sobha Narain, the predecessor-in-interest (recorded owner). The LAC has also contended that the transfer of the subject land is prohibited under section 3 of the Delhi Lands (Restriction and Transfer) Act, 1972.

7. At the outset, learned counsel for 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 1987-88, whereas the present petition has been filed after more than three decades. The petition is obviously barred by laches.

8. It is also pertinent to note that the Petitioner has relied on the "jamabandi" records and an unregistered sale deed dated 28th August 1991, to justify its title/ownership over the subject land. It claims that the possession of the subject land remained with its predecessor-in-interest and after the sale of the subject land, it has been with the Petitioner. However, there is no reliable title document or any revenue record to prove Petitioner's title and ownership over the subject land, in accordance with law.

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. This Court passed similar decisions vide judgments 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*), has dismissed similar petitions seeking a declaration under Section 24(2) of the 2013 Act, 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. It also needs to be emphasized that this court has also dismissed several other petitions on the ground of delay and laches and challenge against those 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.