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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 7366/2017**

SHEETAL SHARMA .... Petitioner

Through: Mr. Vishal Singh and Ms. Jyoti Kataria Bajaj, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS. .... Respondents

Through: Mr. Mohammad Yunus and Ms. Shahana Farah, Advocates for DDA.
Mr. Yeeshu Jain, Standing Counsel along with Ms. Jyoti Tyagi, Advocate for LAC/L&B.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 07.08.2019

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

> "(i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect 1000 sq. yards of land of the Petitioner comprised in Plot Nos. 168, 169, 170, 171 and 172 (each Plot measuring 200 sq. yards) out of Khasra No.29/3 and 26/23, situated in the revenue estate of Village Kakrola, New Delhi-110043, as having lapsed and further quashing the impugned notification No.F.10(6)/88-L&B dated 06.06.1991 issued under Section 4& 17(1), Notification No.F-10(6)/88- L&B dated 06.12.1991 issued Under Section 6 of the Old Act and the Award No.1/93-94 with respect to 1000 sq. yards of land of the Petitioner comprised in Plot Nos. 168, 169, 170, 171 and 172 (each Plot measuring 200 sq. yards) out of Khasra No.29/3 and 26/23,

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situated in the revenue estate of Village Kakrola, New Delhi-110043

AND

(ii) issue a writ of mandamus and/or any other writ, order and direction of the similar nature directing the Respondents to handover and deliver the vacant peaceful physical possession of 1000 sq. yards of land of the Petitioner comprised in Plot Nos. 168, 169, 170, 171 and 172 (each Plot measuring 200 sq. yards) out of Khasra No.29/3 and 26/23, situated in the revenue estate of Village Kakrola, New Delhi-110043."

2. The background facts are that the land in question i.e. 1000 sq.yards constituted by Plot Nos. 168, 169, 170, 171 and 172, all situated in Village Kakrola, New Delhi (hereafter, 'subject land') was notified under Section 4 of the Land Acquisition Act, 1894 ('LAA') on 6th June, 1991 for the public purpose "planned development of Delhi". This was followed by a declaration under Section 6 dated 6th December, 1991. The Land Acquisition Collector ('LAC') passed an award being Award No. 1/93-94 on 2nd April, 1993.

3. As far as the Petitioner is concerned, it is averred in the petition that she purchased the subject land from Shri Umed Singh, Shri Mehar Singh, Shri Ram Kishan, Shri Satbir, Shri Risak Ram and Shri Lakhpat, by way of an Agreement to Sell ('ATS') and General Power of Attorney ('GPA'), dated 24th September, 1988. It is further averred in the petition that possession of the subject land was taken by the Respondents, but that the land has remained unutilized for 26 years. In an attempt to demonstrate the same, photographs have been annexed with the petition. In the grounds of the petition, it is averred that compensation has not been paid or tendered to the

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Petitioner. Thereafter, the petition refers to the enactment of the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') and the Petitioner's entitlement to a declaration of deemed lapsing under Section 24 (2) on the ground that compensation remains unpaid and possession of the subject, even though taken, has ceased to serve its public purpose.

4. A counter affidavit has been filed on behalf of the LAC. It is averred therein that the Petitioner has claimed relief in respect of land measuring 1000 sq.yards, without setting out the exact bifurcation in the respective Khasra Nos. It is further averred that the Petitioner has admitted that possession of the subject land has already been taken and that the photographs annexed with petition show there to be a board of the DDA, thereby bearing out the said fact. It is further averred that compensation for acquisition of the subject land has been paid to the recorded owners, namely, Mehar Singh, Ram Kishan, Satbir Singh, Rizak Ram and Lakhpat in the year 1993 through different cheques. It is averred that the fact the recorded owners applied for compensation and other allied documents in relation to the subject land, amounts to a revocation of the GPA, by way of which the Petitioner claims to have purchased the subject land.

5. A rejoinder has been filed on behalf of the Petitioner to the counter affidavit of the LAC, where it is averred that the GPA predates the LAA Section 4 notification and the Section 6 declaration. It is further averred that the subject land was divided by the predecessor-owner into plots in the colony known as Bharat Vihar in Kakrola, Najafgarh, New Delhi. It is also

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averred that although possession has not been taken, the application of Section 24 (2) does not hinge only on possession. It is also averred that the Respondents issued notices under Sections 9 and 10 in the Petitioner's name and that her name was also included in the list of claimants at S.No. 1182. All other averments of the LAC have been denied and the contents of the writ petition reiterated.

6. It is not disputed that possession of the subject land has already been taken. As regards compensation, the assertion of the Petitioner that compensation has not been paid, gives rise to a disputed question of fact, which cannot be examined in the present proceedings. The fact further remains that there is no explanation in the petition for the inordinate delay in approaching the Court for relief.

7. On the aspect of laches, in ***Indore Development Authority v. Shailendra (2018) 3 SCC 412*** a three Judge Bench of the Supreme Court of India observed as under:-

> "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/negatived, 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,

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even for a moment, intended that such cases would be received or entertained by the courts."

8. 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 (2014) 3 SCC 183*** 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 in ***Mool Chand v. Union of India*** *(2019)173 DRJ 595 (DB).*

9. For the aforementioned reasons, the writ petition is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 07, 2019
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