

Harish Kumar vs.delhi Development Authority & Anr

Harish Kumar vs.delhi Development Authority & Anr

SooperKanoon Citation : sooperkanoon.com/1223348

Court : Delhi

Decided On : May-21-2019

Appellant : Harish Kumar

Respondent : Delhi Development Authority & Anr

Judgement :

\$~43 to 50 * + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C)
9228/2018 PUSHPA RANI

... Petitioner

Through: Ms.Anusuya Salwan with Ms.Nikita Salwan, Ms.Shreya Sharma &
Mr.Ayush Srivastava, Advocates. versus DELHI DEVELOPMENT AUTHORITY &
ANR Through: Mr.Arun Birbal with Mr.Sanjay

... RESPONDENTS

Singh, Advocates for DDA. Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi,
Advocate for LAC/L&B-R2. + W.P.(C) 9229/2018 OM PRAKASH (SINCE
DECEASED)

... Petitioner

Through: Ms.Anusuya Salwan with Ms.Nikita Salwan, Ms.Shreya Sharma &
Mr.Ayush Srivastava, Advocates. DELHI DEVELOPMENT AUTHORITY & ANR
versus

... RESPONDENTS

Through: Mr.Arun Birbal with Mr.Sanjay Singh, Advocates for DDA. Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Advocate for LAC/L&B-R2. + W.P.(C) 9230/2018 HARISH KUMAR

... Petitioner

Through: Ms.Anusuya Salwan with Ms.Nikita Salwan, Ms.Shreya Sharma & W.P.(C) 9228/2018 and connected matters. Page 1 of 12 Mr.Ayush Srivastava, Advocates. DELHI DEVELOPMENT AUTHORITY & ANR versus

... RESPONDENTS

Through: Mr.Arun Birbal with Mr.Sanjay Singh, Advocates for DDA. Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Advocate for LAC/L&B-R2. + W.P.(C) 9231/2018 JAG MOHAN

... Petitioner

Through: Ms.Anusuya Salwan with Ms.Nikita Salwan, Ms.Shreya Sharma & Mr.Ayush Srivastava, Advocates. DELHI DEVELOPMENT AUTHORITY & ANR versus

... RESPONDENTS

Through: Mr.Arun Birbal with Mr.Sanjay Singh, Advocates for DDA. Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Advocate for LAC/L&B-R2. + W.P.(C) 9232/2018 MOHAN LAL ARORA

... Petitioner

Through: Ms.Anusuya Salwan with Ms.Nikita Salwan, Ms.Shreya Sharma & Mr.Ayush Srivastava, Advocates. DELHI DEVELOPMENT AUTHORITY & ANR versus Through: Mr.Tanmay Yadav, Advocate for

... RESPONDENTS

W.P.(C) 9228/2018 and connected matters. Page 2 of 12 + Ms.Mrinalini Sen, Standing Counsel for DDA. Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Advocate for LAC/L&B-R2. W.P.(C) 9233/2018 JAWAHAR LAL PURI

... Petitioner

Through: Ms.Anusuya Salwan with Ms.Nikita Salwan, Ms.Shreya Sharma & Mr.Ayush Srivastava, Advocates. DELHI DEVELOPMENT AUTHORITY & ANR versus

... RESPONDENTS

Through: Mr.Pawan Mathur, Standing Counsel for DDA. Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Advocate for LAC/L&B-R2. + W.P.(C) 9234/2018 RAKESH PURI

... Petitioner

Through: Ms.Anusuya Salwan with Ms.Nikita Salwan, Ms.Shreya Sharma & Mr.Ayush Srivastava, Advocates. DELHI DEVELOPMENT AUTHORITY & ANR versus

... RESPONDENTS

Through: Mr.Arun Birbal with Mr.Sanjay Singh, Advocates for DDA. Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Advocate for W.P.(C) 9228/2018 and connected matters. Page 3 of 12 + LAC/L&B-R2. W.P.(C) 9235/2018 Through: Ms.Anusuya Salwan with Ms.Nikita KANCHHIDMAL (SINCE DECEASED) THROUGH: LR SH. ARUN KUMAR

... Petitioner

DELHI DEVELOPMENT AUTHORITY & ANR Through: Mr.Arun Birbal with Mr.Sanjay Salwan, Ms.Shreya Sharma & Mr.Ayush Srivastava, Advocates.

... RESPONDENTS

versus Singh, Advocates for DDA. Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Advocate for LAC/L&B-R2. % CORAM: JUSTICE S.MURALIDHAR JUSTICE I.S.MEHTA

ORDER

2105.2019 Dr. S. Muralidhar, J.:

1. These petitions arise from the same background facts and raise similar issues. They are accordingly being disposed of by this common judgment. They were nevertheless heard separately.

2. In each of the petitions the prayer is for a declaration that the land acquisition proceedings in respect of the property in Khasra Nos.6

min, W.P.(C) 9228/2018 and connected matters. Page 4 of 12 6
min and 6

min in village Kilokari, Delhi 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 (2013 Act).

3. The background facts are that each of the

... Petitioner

s claim to be in possession of a small parcel of land in the above location near the Fire Station, Ashram Chowk, Jagram Akhara, New Delhi since 1935 where the predecessors of the

... Petitioner

s had established a shop in order to earn their livelihood.

4. The admitted position is that the land acquisition proceedings were initiated in 1964 and culminated in Award No.1716 dated 20th July 1964. Further it is not in dispute that during all these years there was no challenge whatsoever to the land acquisition proceedings.

5. As far as the physical possession is concerned, a note was prepared on 30th August 1964 by the authorities concerned to the effect that while possession of the vacant land was taken, possession of land over which structures existed and was in the occupation of co-owners and tenants could not be taken over as they refused to hand over the possession. A list of such structures was also appended to the said note.

6. The narration in each of the petitions omits to state what happened during the intervening years from the passing of the Award till when the Delhi Development Authority (DDA)/ Respondent No.1 apparently started raising demands for damages which were duly paid by the

... Petitioner

s. It is W.P.(C) 9228/2018 and connected matters. Page 5 of 12 then stated that when demolition action was threatened on 8th November 2006, WP(C) Nos. 16852-61 of 2006 were filed in this Court. An interim order was passed in those writ petitions on 14th November 2006 directing status quo to be maintained.

7. It is stated that on 4th December 2006 show cause notices were issued to the each of the

... Petitioner

s under Section 4 (1) of the Public Premises (Eviction of Unauthorised Occupants), 1971 (PP Act) pursuant to which each of the

... Petitioner

s appeared before the Estate Officer and filed objections. It appears that on 20th December 2006 the Estate Officer passed eviction orders which were then challenged by each of the

... Petitioner

s by filing petitions under Section 9 of the PP Act before the learned Addl. District Judge (ADJ), Tis Hazari Courts.

8. When WP(C) 16852-61 of 2006 came up for hearing before the learned Single Judge of this Court an order was passed on 6th February 2007 directing time bound disposal of the appeals by the learned ADJ and status quo to be maintained in the meanwhile.

9. According to the

... Petitioner

s, in disregard of the above order, the DDA officials on 9th June 2007 forcibly sealed the premises occupied by the

... Petitioner

s. Another writ petition being WP(C) 4608 of 2007 was filed in which a split verdict was delivered by the Division Bench on 12th October 2007. It is stated that before the verdict of the third learned Judge to whom the matter was referred could be

delivered, the Supreme Court stayed the proceedings in the said writ petition by its orders in WP(C) 4677 of 1985 W.P.(C) 9228/2018 and connected matters. Page 6 of 12 (M.C.Mehta v. Union of India).

10. The

... Petitioner

s challenged the sealing action before the Supreme Court by filing an application in the said WP(C) 4677 of 1985. In the year 2014 the matter concerning the sealing of the

... Petitioner

s premises was transferred to the Appellate Tribunal MCD in Appeal No.251 of 2014 which is stated to be pending adjudication.

11. Meanwhile on 6th May 2008 the learned ADJ dismissed the

... Petitioner

s appeal under Section 9 of the PP Act. This was challenged before this Court by the

... Petitioner

s by filing WP(C) 4489 of 2008 which came to be dismissed by learned Single Judge on 9th June 2008. The learned Single Judge noted the submission of counsel for the

... Petitioner

s that the

... Petitioner

s do not possess any title over the land in question. 12. The said order dated 9th June 2008 was challenged by way of LPA Nos.493, 494, 495 and 660 of 2008. A common judgment dated 5th November 2008 was passed by the Division Bench (DB) of this Court disposing of the said appeals and remanding the matters to the Estate officer for cross-examination of Halka Patwari.

13. The writ petitions then narrate the various proceedings that took place before the Estate Officer ending in orders again being passed on 13th May 2016 against the

... Petitioner

s. The appeal filed against the said order by the

... Petitioner

was dismissed by the learned District and Sessions Judge (D&SJ) on 2nd July 2018. W.P.(C) 9228/2018 and connected matters. Page 7 of 12 14. The

... Petitioner

s therein filed a series of petitions before the learned Single Judge of this Court assailing the said order of the D&SJ.

All the petitions were dismissed as withdrawn on 14th August 2018 after noting the following statement on behalf of the

... Petitioner

s: 4. After hearing, the counsel for the petitioners, under instructions from the petitioners, unconditionally withdraws these petitions and states that the petitioners shall be bound by the orders of their respective eviction unless they get relief in proceedings which the petitioners intend to initiate under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is stated that the orders of eviction be made inexecutable for a period of 10 days from today, to enable the petitioners to initiate the said proceedings and to seek interim orders of protection from eviction in the said proceedings. 15. The eviction orders were made inexecutable till 26th August 2018. It must be noted that the learned Single Judge also noted the submission of the DDA in para 6 as under: 6. The counsel for the respondent DDA however draws attention to the order dated 9th June, 2008 of this Court in the earlier round, recording the statement of the then counsel for the petitioners that the petitioners have no title to the premises in their respective occupation and are merely in possession thereof for long. It is argued that the petitioners have no rights under the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act. 16. Pursuant to the above order the present writ petitions were filed. They came up for hearing first on 31st August 2018, on which date while declining interim relief the Court passed the following order: W.P.(C) 9228/2018 and connected matters. Page 8 of 12 that The petitioners claim to be interested persons within the definition of Section 3(10) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act'). The petitioners seek a declaration the acquisition proceedings pertaining to the land of the petitioners are deemed to have lapsed as neither physical possession has been taken nor compensation has been paid. Counsels for the respondents who have entered appearance on an advance copy have raised a preliminary objection with regard to the maintainability of the writ petitions on the ground that the petitioners do not fall within the definition of interested persons. In fact they are rank trespassers. Proceedings were initiated against them under the Public Premises Act and orders for eviction were passed by the Estate Officer and an appeal under Section 9 of the Public Premises Act against the orders before the learned District and Sessions Judge, South-East, Saket Courts, Delhi stands dismissed. The writ petitions filed also stand dismissed as withdrawn unconditionally except to file writ petitions invoking Section 24(2) of the Act. Ms Salwan, learned counsel appearing for the petitioners, has relied on paragraphs 17 and 29 of Govt. of NCT of Delhi vs. Manav Dharma Trust and another, reported in 2017 (6) SCC751 in support of her contention. Learned counsels for the respondents submit that the judgment in the case of Manav Dharma (supra) will not apply to the facts of the present cases in view of the fact that the question of title stands decided in proceedings initiated under the Public Premises Act. The order of eviction has been passed and thus it cannot be said that the petitioners have any right, title or interest over the land in question. Prima facie we find force in the submissions made by counsels for the respondents. Issue notice to show cause as to why petitions be not admitted subject to the preliminary objection raised by the respondents. W.P.(C) 9228/2018 and connected matters. Page 9 of 12 Counter affidavits be filed within four weeks. Rejoinder(s), if any, be filed within four weeks thereafter. List on 29.10.2018. In view of the reasons aforesaid, the interim relief is declined. 17. This Court has heard the submissions of Ms. Anusuya Salwan, learned counsel appearing for the

... Petitioner

s, Mr.Arun Birbal, learned counsel appearing for the DDA and Mr.Yeeshu Jain, Standing Counsel for LAC/L&B. A counter affidavit has been filed by the DDA in opne of the petitions i.e. W.P. 9235 of 2018 (Kancchid Mal v. DDA & Anr.).

18. Ms. Salwan placed reliance on the judgment of the Supreme Court in Govt. of NCT of Delhi v. Manav Dharm Trust (2017) 6 SCC751and urged that the

... Petitioner

s were not precluded from questioning the land acquisition proceedings after a valuable right accrued to them in terms of Section 24 (2) of the 2013 Act with effect from 1st January 2014.

19. There are several reasons why the said decision will not come to the aid of the present

... Petitioner

s. In the first place as the above narration shows there were already two rounds of litigation under the PP Act in which the

... Petitioner

s failed to demonstrate any right, title or interest in the properties under their occupation. Therefore, there has already been a failed attempt on their part to question the action of the

... RESPONDENTS

in seeking to evict them.

20. The second reason is that the land acquisition proceedings culminated W.P.(C) 9228/2018 and connected matters. Page 10 of 12 with the passing of the Award way back in 1964 i.e. more than 55 years ago. Section 24(2) of the 2013 Act is not meant to come to the aid of such persons who have already failed in other attempts made by them to avoid eviction. The claim of the

... Petitioner

s that they have any right, title or interest stands comprehensively decided against them in the proceedings under the PP Act.

21. Thirdly, the

... Petitioner

s have never questioned the land acquisition proceedings till the filing of the present petitions in 2018 which again is more than 3 years after the coming into force of the 2013 Act on 1st January 2014. Clearly, the petitions are barred by delay and laches. The following observations of the Supreme Court in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 squarely apply to the present petitions: 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. 22. It may be noted here that the reference made by a Constitution Bench in *Indore Development Authority v. Shyam Verma* (2018) 4 SCC 405 W.P.(C) 9228/2018 and connected matters. Page 11 of 12 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 in *Mool Chand v. Union of India* 2019 (173) DRJ 595 DB.

23. Consequently, the Court finds no merit in any of these petitions. The writ petitions and all pending applications, if any, are dismissed. S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY21 2019 tr W.P.(C) 9228/2018 and connected matters. Page 12 of 12

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