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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 853/2014 & CM APPLs. 1717/2014 AND 4289/2016

**RESIDENTIAL WELFARE ASSOCIATION,
UTSAV VIHAR**

..... Petitioner

Through: Mr. A.K. De, Advocate with
Ms. Ananya De, Mr. Rajesh Dwivedi,
Mr. Z.A. Khan and Mr. Anuj
Chauhan, Advocates.

versus

**DELHI DEVELOPMENT
AUTHORITY & ORS**

..... Respondents

Through: Mr. Ajay Verma, Sr. Standing
Counsel with Mr. Vaibhav Mishra,
Advocate for DDA.
Mr. Siddharth Dutta, Advocate for
respondent No.2.
Ms. Saroj Bidawat, Advocate for
respondent No.3.

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Reserved on : 18th November, 2016

Date of Decision : 3rd January, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. The present writ petition has been filed restraining the respondent-DDA from encroaching and/or dispossessing any member

of the petitioner-association from his land as well as for a direction to respondents No.2 and 3 to decide the representation dated 22nd September, 2012 of the petitioner-association. The petitioner also seeks a direction to respondents No.1 and 2 to proceed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act, 2013') in case any land forming part of the colony of the members of the petitioner-association is required for any public purpose.

2. While it is the petitioner's case that in 1992, a colony named Utsav Vihar was developed by a colonizer on private agricultural land, the admitted position is that the land in question was acquired pursuant to a Notification dated 21st March, 2003 under Section 4 of the Land Acquisition Act, 1894 (for short 'Act, 1894') as well as Declaration dated 19th March, 2004 under Section 6 of the Act, 1894 and the Award issued in 2005. On 21st February, 2007, possession was taken over by respondent-DDA after effecting some demolition.

3. It is also an admitted position that part of the alleged petitioner's colony falls within the alignment of the roads proposed by respondent-DDA.

4. The petitioner-association, in accordance with the policy of respondent No.3 for regularization of unauthorised colonies, prepared the layout plan of the entire colony and submitted an application dated 19th January, 2005 for regularisation of the colony. The said application for regularisation was registered by respondent No.2 vide No.00902

dated 19th January, 2005 and petitioner's colony was listed at serial No.1314.

5. Mr. A.K. Dey, learned counsel for the petitioner submitted that though Section 4 Notification and Section 6 Declaration under the Act, 1894 had been issued and an Award had been passed, yet as no compensation had been paid till date, the land of the petitioner's colony is no more acquired Government land. In support of his submission, he relied upon Section 24(2) of the Act, 2013. He repeatedly emphasised that since the acquisition proceedings had lapsed, the land of the petitioner's colony no longer remained acquired government land. Consequently, according to him, the respondent No.1 is not entitled to utilize any part of the petitioner's colony for any purpose and if the respondents required any land for construction of the road, they can proceed only under the Act, 2013.

6. Mr. Dey contended that despite the fact that the regularisation of the colony of the members of the petitioner-association was under process, the officials of respondents No.1 and 2 visited the colony of the petitioner- association on 21st February, 2007 and carried out large scale demolition of various houses and boundary walls forming a part of the colony of the petitioner-association.

7. Mr. Ajay Verma, learned counsel for respondent No.1-DDA stated that the present writ petition was not maintainable and the petitioner had no locus standi to file the present writ petition. He stated that admittedly petitioner owned no land and the writ petition failed to

describe the land of the colony much less provide the Khasra numbers including those falling in the 100 metre road and 40 metre road. He pointed out that there was no list of members of the petitioner and there was no disclosure as to whom the authority to sue had been vested nor the minutes of petitioner's governing body or general body had been disclosed much less who was present to authorise the Vice President to sign the petition.

8. He contended that even the site plan at page 899 showed that in the land falling in the alignment of 100 metre road, only about nine properties or part thereof fall therein. According to him, petitioner-association cannot seek relief for the entire colony on that basis particularly when those individual members of petitioner who may have been affected had not approached this Court.

9. Mr. Ajay Verma further stated that the writ petition was not maintainable by petitioner also because as per admission of petitioner's counsel, some individual members of petitioner-association had already instituted writ petitions in this Court under Section 24(2) of the Act, 2013.

10. He stated that with the taking over of possession by LAC and handing over the same to DDA on 21st February, 2007 under Section 16 of the Act, 1894, the acquisition stood complete and the land stood vested in DDA free from all encumbrances. He pointed out that the possession proceedings of 21st February, 2007 clearly showed that the

possession of the land had been taken over by DDA after effecting demolition. According to him, as all members of the petitioner-association were purchasers post acquisition of land and the construction in the colony was subsequent thereto, the construction was illegal and present writ petition by subsequent purchasers is not maintainable.

11. In any event, he contended that as the unauthorized colony of the petitioner was on acquired Government land, DDA was entitled to utilise any portion of the acquired land for a public project.

12. Mr. Siddharth Dutta, learned counsel for respondent No.2 not only adopted the contentions and submissions advanced by Mr. Ajay Verma, but also submitted that the present writ petition had become infructuous as respondent No.2 by way of a speaking order dated 08th May, 2014 in accordance with the Policy for Regularisation in particular its Clause 3.3.3(b) had specifically and unequivocally rejected the petitioner's representation dated 22nd September, 2012 on the ground that the land was required for public purpose, namely, for construction of a public road.

13. Mr. Dutta pointed out that the Geospecial Delhi Limited vide its letter dated 09th October, 2014 had found that the total built up area in petitioner's colony stood at 13% in 2002 and 15.41% in 2007. He stated that by virtue of Clause 3.3.3 (c) of the Regulation dated 24th March, 2008, only an unauthorised colony wherein more than 50% of

the plots were built up on the cut-off date could be considered for regularisation. Therefore, according to him, the petitioner's colony could not have been regularised as the built up area was less than 50% on the cut-off date.

14. He contended that as the petitioner-association had till date not challenged rejection order dated 08th May, 2014, it could not seek any relief under the amended Regulation dated 01st January, 2015.

15. In rejoinder, Mr. Dey submitted that the petitioner-association had the locus standi to maintain the writ petition as in view of the guidelines issued by respondent No.1, it was the Resident's Society which had submitted the proposals for regularization on 19th January, 2005 and 28th December, 2007 with layout plans.

16. He stated that it was not clear as to what was meant by the expression 'subsequent owner' as it was admitted that the petitioners are owners of the land for valuable consideration. According to him, in view of the objective of the Act, 2013 and in view of the definition of 'person interested' in the Act read with provisions of Sections 18, 21 and 22 of the Act, 2013, it was absolutely frivolous for the respondent No.1-DDA to contend that the members of the petitioner could not claim any benefit.

17. Mr. Dey submitted that the argument that by virtue of Section 16 of the Act, 1894, the land now vested with the Government was frivolous in view of Section 114 of the 2013 Act, which had repealed

the whole of the Act, 1894.

18. He also stated that rejection of the representation dated 22nd September, 2012 would not come in the way of regularization of the colony as the petitioner by application for regularization dated 19th January, 2005 and 28th December, 2007 with layout plans had sought regularization of the whole colony and not part of the colony. He also stated that as respondent No.2 had itself called for built up percentage report for 2015 in terms of Gazette Notification dated 01st January, 2015 (which is pending as on date) the respondents could not have rejected the petitioner's application for regularisation.

19. He pointed out that Clause 3.3(c) of the Gazette Notification S.O. 683(E) dated 24th March, 2008 had been modified vide Gazette Notification No.S.O. 21(E) dated 01st January, 2015 and therefore, percentage of built up plots and not built up area was relevant. He stated that a report dated 12th December, 2010 prepared by the respondent No.2 itself showed that as on 2008-2009 according to MCD the built up percentage of plots was 51.7.

20. Having heard learned counsel for the parties, this Court finds that arguments of the counsel for the petitioner as also the reliefs sought during the hearing are much beyond the pleadings and the prayer clause.

21. The prayer in the present writ petition is for an order restraining respondent No. 1 from making any encroachment on the petitioner's

colony and from dispossessing any member of the petitioner-association from his land in the colony as well as for a direction directing respondent Nos. 2 and 3 to decide the petitioner's representation dated 22nd September, 2012 and to proceed under the Act, 2013 in case any land of the petitioner-association was required for public purpose like construction of a road.

22. This Court is of the opinion that the effect of the Act, 2013, if any, can be determined by the Competent Court only when it is approached by an owner in accordance with law after setting out detailed facts with regard to his ownership, possession and non-receipt of compensation, which will have to be tested on the touchstone of law. In fact, if members of petitioner-association seek to rely on the Act, 2013, they would have to file individual writ petitions like other similar situated persons who have already sought a declaration that the acquisition under the Act, 1894, had lapsed under the Act, 2013. Till the time the appropriate Court does not declare that the acquisition proceeding has lapsed, this Court is of the view that the right of DDA to the land cannot be questioned.

23. This Court is also of the view that if the members of petitioner-association can file petitions for release of their lands in their individual capacity, they should also file individual petitions with respect to their respective lands for the relief sought in the present writ petition.

24. Upon a detailed reading of the writ petition, it is apparent that the gravamen of the petition is that the petitioner's representation dated 22nd September, 2012 should be disposed of by respondent No.2 before any coercive action is taken by the respondents. It is pertinent to mention that petitioner in Ground (i) at page 11 of the petition submits that petitioner had made various representations resting with the representation dated 22nd September, 2012 seeking regularisation of the colony.

25. However, respondent No.2 has placed on record the decision dated 08th May, 2014 rejecting the said representation. Since it is a well-considered decision, the same is reproduced hereinbelow in its entirety:-

*“THE GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI
DEPARTMENT OF URBAN DEVELOPMENT
(UNAUTHORISED COLONY)
9th LEVEL ‘C’ WING, DELHI SECTT.
I.P. ESTATE, NEW DELHI – 110002*

F. NO. CD-021199490/902/UC-1/UD/2014/600-602

Dated 08/5/2014

ORDER

Whereas, President, Resident Welfare Association Block A A-1 A-2 Utsav Vihar had filed representation on 22.09.2012 aggrieved the Govt. of NCT of Delhi not to exclude 95 bighas of Govt. land comprising Khasra Nos. 73/12, 13, 14, 17, 18, 19, 22, 23, 24, 83/1, 2/1, 2/2, 3, 4, 7/2, 8/2, 9, 10/1, 10/2, 23/2, 84/14, 15, 17, 23, 24, 96/3, 4, 5, 97/1 and 10 forming part of the colony from

the process of regularisation.

And whereas, the President of above said RWA filed a petition before the Hon'ble High Court vide No. WP(c) 6356/2013 and CM Appl. 13881/2013 titled as Major Narayan Singh Vs. DDA and Ors. While disposing of the petition Hon'ble High Court of Delhi vide order dated 16.01.2014, directed Respondent No. 2 i.e. Govt. of NCT of Delhi through Secretary, Urban Development Department to dispose of petitioner's representation dated 22nd September 2012 as expeditiously as possible, preferably within sixteen weeks.

And whereas, the Urban Development Department has received copy of report sent to Divisional Commissioner GNCTD vide letter No. F.12(343)7/HC/Legal/207 Dated 20.05.2013 from DDA wherein, it has been requested to delete the above said khasras falling within the alignment of 100 mtrs. wide road (UER-II) from the list of Utsav Vihar unauthorised colony which causing hindrance and inordinate delay in constructing the 100 mtr. wide road (UER-II).

And whereas, Clause 3.3(b) of the regulation dated 24.03.2008 states that the Unauthorised Colonies / part of UC which pose hindrance in the provision of infrastructure facilities or fall in the area of right of way (ROW) of existing / proposed railway lines, master plan roads and major / trunk under water supply and sewerage link would not be considered for regularization.

And therefore, area/part of unauthorised colony namely Utsav Vihar fall within alignment road proposed by DDA and shall not be considered for regularisation. Hence representation dated 22.9.2012 is rejected.

This issue with approval of Secy. (UD)

*(R.K. Bilyan)
Deputy Secretary (UC)''*

(emphasis supplied)

26. With the rejection of the representation dated 22nd September, 2012 and the same having not been impugned by petitioner or any of its members for more than two years, this Court is of the view that it is not open for the petitioner to seek any relief in relation thereto.

27. Consequently, the prayers in the present writ petition cannot be granted in relation to the 2013 Act for the reasons stated above.

28. Also, petitioner's reference and reliance on any policy amendment in 2015 is baseless and misconceived as the petition filed in February, 2014 is prior thereto and the petition has not been amended to incorporate the said ground.

29. This Court would like to emphasise the distinction between an unauthorized colony and jhuggi jhopri cluster. While jhuggi jhopri clusters are normally born out of need and necessity for housing of the poor and under privileged, unauthorized colonies are normally born out of greed with intent to secure unmerited benefits. Legalising of unauthorized colonies in the past has not only emboldened the purchasers of acquired land and rank encroachers but has created manifold problems of environmental degradation, traffic bottlenecks etc. It is pertinent to mention that people who have cut these unauthorized colonies have neither paid full development charges to the civic authorities nor provided proper civic facilities like roads, sewerage, drainage, water and electricity facilities and as a consequence, diseases like malaria, diarrhea and tuberculosis are

common in Delhi. It goes without saying that is extremely difficult if not impossible to provide adequate and proper sewage, drainage and roads after an unplanned colony has been constructed and occupied. After all, if construction has been carried out in a haphazard manner without adhering to any scientific norms like grid pattern and/or there is not enough vacant land available, how can a road with adequate width be subsequently provided.

30. Consequently, present writ petition and pending applications being bereft of merits are dismissed but with no order as to costs.

MANMOHAN, J

JANUARY 03, 2017

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