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

+ LPA 67/2017 & CM Nos.3377/2017 (*stay*) & 5364/2017(*Impleadment*)

RESIDENTIAL WELFARE

ASSOCIATION, UTSAV VIHAR

..... Appellant

Through: Mr.A.K.De with Mr.Rajesh Dwivedi
& Ms.Ananya De, Advs.

Versus

DELHI DEVELOPMENT

AUTHORITY & ORS

..... Respondents

Through: Mr.Ajay Verma, Sr. Standing Counsel
with Mr.Vaibhav Mishra & Mr.Gurmehar
S.Sistani, Adv. for R-1.

Mr. Siddharth Dutta, Adv. for R-2.

Ms. Saroj Bidawat, Adv. for UOI.

Mr. Lokesh Shrivastav, applicant-in-person in
CM No.5364/2017.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

22.02.2017

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MS. G. ROHINI, CHIEF JUSTICE:

1. This appeal is preferred against the order of the learned Single Judge dated 03.01.2017 in W.P.(C) No.853/2014.
2. The unsuccessful petitioner is the appellant before us.
3. The appellant/writ petitioner claims to be a registered society representing the colony named Utsav Vihar (Block-A, A-1 and A-2). It was pleaded in the writ petition that the said colony was developed in the year

1992 on a private agricultural land and that the entire colony was fully built up. It was also pleaded that on 19.01.2005, the petitioner association filed an application before the Govt. of NCT of Delhi (GNCTD)/respondent No.2 herein for regularization of the colony in terms of the policy of the Union of India for regularization of unauthorized colonies. The petitioner association had earlier filed W.P.(C) No.2352/2007 alleging that in spite of the pendency of its application for regularisation, the officials of Delhi Development Authority (DDA) and GNCTD demolished various houses situated in the colony claiming that the land in question was acquired in pursuance of the Notification issued in the year 2003 under the Land Acquisition Act, 1894 in respect of which an award was also passed in 2005-2006. The said writ petition was disposed of by order dated 22.07.2010 by a Division Bench with a direction to the concerned authorities to consider the application for regularization of the petitioner colony in accordance with law and directing to maintain status quo.

4. According to the appellant/petitioner, its application for regularization is still pending. Alleging that contrary to the order of this Court in W.P.(C) No.2352/2007 to maintain status quo, GNCTD attempted in March, 2013 to construct a road across Utsav Vihar Colony, the petitioner association filed W.P.(C) No.853/2014 with a prayer (i) to restrain the respondents from encroaching into a colony; (ii) to dispose of their representation for regularization dated 22.09.2012 and (iii) to direct the respondents to proceed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,

2013 (for short 'the Act, 2013') in case any land forming part of the colony of the petitioner association is required for a public purpose.

5. It was contended in the writ petition that acquisition proceedings under the repealed Land Acquisition Act, 1894 have become non est and stood lapsed in terms of Section 24 of the Act, 2013 since no compensation was paid to anyone of the members of the petitioner association.

6. On the other hand, the specific case of the DDA was that the possession of the land in question was taken over by DDA in the year 2007 itself pursuant to the award passed in the year 2005-2006 under the repealed Land Acquisition Act, 1894 and thus the land vested with the Government and DDA is entitled to utilize the same for a public purpose. It was also contended by the respondents that the petitioner's representation for regularization of the unauthorized colony was rejected by order dated 08.05.2014.

7. W.P.(C) No.853/2014 was dismissed by the learned Single Judge by the order under appeal dated 03.01.2017 holding that the effect of the Act, 2013 can be determined only when the proceedings are initiated by the owner of the land and no such relief can be granted at the instance of an association. Taking note of the fact that proceedings have already been initiated by some of the similarly situated persons to declare that the acquisition under the repealed Act had lapsed, the learned Single Judge held that if aggrieved, it is for the members of the petitioner association to file individual writ petitions for appropriate relief. It was also held that till it is declared that the acquisition proceedings have lapsed, no relief against DDA can be granted. The learned Single Judge was also of the view that as the

order dated 08.05.2014 rejecting the petitioner's representation dated 22.09.2012 has not been challenged, the petitioner is not entitled to seek any relief in relation thereto.

8. Assailing the said order, it is contended by the learned counsel for the appellant that the colony of the appellant association was developed in the year 1992, whereas the land was stated to be acquired vide Notification dated 21.03.2003 in which the award was passed on 02.01.2006. While submitting that no compensation was paid to any of the members of the petitioner society till date, it is vehemently contended by the learned counsel for the appellant that the proceedings under repealed Land Acquisition Act, 1894 stood lapsed and DDA cannot proceed further without complying with the provisions of the Act, 2013.

9. It is further contended by the learned counsel for the appellant that the application of the appellant dated 19.01.2005 for regularization is still pending and the contention of the respondents that the same was rejected by order dated 08.05.2014 is baseless and untenable. To substantiate his submission, the learned counsel has drawn the attention of this Court to the counter affidavit dated 19.01.2016 filed on behalf of GNCTD wherein it is stated that 1639 applications had been received for regularization of unauthorized colonies and that the process of identification of the colonies is underway. It is sought to be explained by the learned counsel for the appellant that the order dated 08.05.2014 passed by GNCTD was with reference to a representation made by the petitioner association requesting to withdraw the decision of GNCTD to exclude 95 bighas of Government land forming part of the colony from the process of regularization.

10. The further contention of the learned counsel for the appellant is that the members of the petitioner association being the owners of the respective plots, the particulars of which are furnished in the additional affidavit dated 25.04.2014 filed in the writ petition, and no compensation was paid to them till date under the Land Acquisition Act, 1894, the entire acquisition proceedings stood lapsed and DDA cannot be allowed to deal with their land for the alleged public purpose.

11. We have also heard the learned counsels appearing for DDA and GNCTD in detail and perused the material available on record.

12. As noticed above the specific case of the respondents is that the land in question, i.e., the area covered by the colony 'Utsav Vihar' was acquired under the Land Acquisition Act, 1894 vide Notification dated 31.03.2003 in which the award under Section 11 was passed on 02.01.2006 and the possession was handed over to the beneficiary/DDA. It is pointed out by Sh.Ajay Verma, the learned Sr.Standing Counsel appearing for the DDA that even as per their own case, the members of the petitioner association came into possession of the respective plots in 'Utsav Vihar' colony by virtue of Irrevocable Power of General Attorneys that were executed long after the Notification dated 31.03.2003 and the award dated 02.01.2006. Thus, it is contended by Sh.Ajay Verma that the members of the petitioner association, who might be the subsequent owners of the plots in question are not entitled to make any claim under the Act, 2013.

13. It is also brought to our notice by the learned counsel for DDA that W.P.(C) No.4160/2015 filed by some of the residents of Utsav Vihar Colony to declare that the land acquisition proceedings have lapsed and to restrain

the respondents from interfering with their possession is pending in this Court. It is submitted by him that after the dismissal of W.P.(C) No.853/2014 by the order under appeal dated 03.01.2017, a fresh application being C.M.No.1039/2017 was filed on 09.01.2017 by the petitioners in W.P.(C) No.4160/2015 in which it was admitted that the land of the petitioners therein forms part of 'Utsav Vihar' Colony. The said application was disposed of by this Court by order dated 10.01.2017 granting liberty to the petitioners therein to move an appropriate application before the Supreme Court in view of the order dated 10.03.2015 in SLP (C) No.16385-16388 of 2012 directing that no Court other than the Supreme Court would entertain any application for grant of interim directions with reference to 'Rohini Residential Scheme' and execution of the works relating to the said Scheme.

14. A perusal of the order of the Supreme Court dated 10.03.2015 in SLP(C) No.16385-16388 of 2012 titled ***Rahul Gupta vs. DDA and Others***, shows that the Supreme Court was dealing with certain issues relating to delay in effecting allotment of plots by DDA to the registered applicants in Sectors 28, 29, 30 and 34 of Rohini Zone. By order dated 10.03.2015, the Supreme Court disposed of the Special Leave Petitions fixing time schedule for execution of the external development work and directing that no court other than the Supreme Court shall entertain any application for grant of interim directions with reference to the above allotments or execution of the works.

15. Again by order dated 18.10.2016, it was reiterated by the Supreme Court that interim directions if any in the matters pertaining to land

acquisition relating to 'Rohini Residential Scheme' pending before the High Court cannot be continued and DDA was granted liberty to produce a copy of the said order for vacation of the interim directions granted by this court. By the said order, a batch of applications were disposed of vacating various interim orders passed by this Court relating to 'Rohini Residential Scheme'. We have also noticed that contempt proceedings initiated against DDA for the alleged failure to comply with the order dated 10.03.2015 are pending.

16. It is also relevant to note that one Lokesh Srivastava filed C.M.No.5364/2017 seeking impleadment as a party respondent to this appeal pleading that he is representing 37 house owners of Utsav Vihar who are actually residing there since 1992 and alleging that none of them had authorized the appellant herein to litigate on their behalf and that the entire litigation is at the behest of some property dealers and some non-resident house owners. It is also pleaded that pursuant to the proceedings initiated under the Land Acquisition Act, 1894, the possession of the vacant land of Utsav Vihar Colony was handed over to DDA long back in 2007.

17. In the light of the facts and circumstances noticed above, we do not find any basis for the claim of the appellant that the members of the petitioner Association are the original owners of the land and are entitled to compensation pursuant to the award dated 02.01.2006. The further contention that the application of the appellant for regularization of the unauthorized colony is still pending also appears to be untenable since even according to the appellant series of representations were made for regularization including the representation dated 22.09.2012 which was admittedly disposed of vide order of GNCTD dated 08.05.2014.

18. Even assuming that the representation of appellant dated 19.05.2005 of the appellant is yet to be processed, we are of the view that the prayer in the writ petition to restrain DDA from laying the road across the area covered by Utsav Vihar Colony cannot be granted in view of the order of the Supreme Court in SLP(C) No.16385-16388 of 2012. The plea of the appellant that the area covered by Utsav Vihar Colony does not form part of Sectors 28, 29, 30 and 34, Rohini is again a disputed question of fact which cannot be adjudicated in writ jurisdiction.

19. So far as the claim of the appellant on the basis of the provisions of the Act, 2013 is concerned, we are of the view that it is for the members of the appellant Association to plead and establish that they were in possession as on the date of the Notification under Section 4(1) of the Land Acquisition Act, 1894 and are entitled for compensation. No such relief can be granted in a writ petition filed by an Association, more particularly, in the absence of any acceptable material to show that all its members were in possession as on the date of the Notification and are entitled to claim compensation. It is relevant to note that about 100 members of the appellant Association have already filed individual writ petitions claiming the benefit of the Act, 2013 and that the same are pending on the file of this Court. The said fact has not been disputed by the learned counsel for the appellant.

20. For the aforesaid reasons, we are of the view that the writ petition was rightly dismissed by the learned Single Judge and the interference by us is not warranted on any ground whatsoever.

21. Accordingly, the appeal is dismissed.

C.M.No.5364/2017

Though we are not inclined to implead the applicant as a party respondent to the writ petition, the applicant who appeared in person has been heard as an intervener.

Accordingly, prayer (i) is allowed. So far as prayer (ii) is concerned, the applicant is at liberty to work out the appropriate remedy as available under law.

The application is disposed of.

CHIEF JUSTICE

FEBRUARY 22, 2017/pmc

SANGITA DHINGRA SEHGAL, J