

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

48

+

W.P.(C) 190/2016

HARBHAGWAN BATRA AND ANR.

..... Petitioners

Through: Mr. H. S. Phoolka, Senior Advocate
with Ms. Prabhsahay Kaur,
Advocates.

versus

GOVT OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
for L&B / LAC.
Mr. Dhanesh Relan, Standing
Counsel for DDA with Ms. Gauri
Chaturvedi, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

19.12.2018

%

1. The present petition has been filed with the prayer that the Court should declare the acquisition proceedings in respect of the land situated in Plot No. 15-18, 20, 21-24, and 27-30 comprised in Khasra No. 53/6, Guru Ramdas Nagar, Khureji Khas, Shakarpur Marg, Delhi admeasuring 750 sq. yds., to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Re-settlement Act 2013 ('the 2013 Act').

2. There is a history to this litigation which requires to be set out in some detail.

3. According to the Petitioners, they along with one Shano Bai purchased the aforementioned property comprising six residential plots admeasuring 100 sq. yds. each and six commercial plots admeasuring 25 sq. yds. each on 9th December 1955. From the narration in the petition itself, it is the admitted position that the Land Acquisition Collector ('LAC'), by a supplementary award dated 19th October 1970, acquired 1527 *bigha* and 7 *biswa* of land in Khureji Khas, out of which 7 *bigha* and 16 *biswa* (i.e. 750 sq. yds.) belonged to the Petitioners. The clear case made out is that "possession of the land was not taken at the time and the compensation offered was not accepted by the Petitioners". It is then averred in para 5 (v) of the petition as under:

"On 28.10.1971, the Respondents came to take possession of the land in Village Khureji Khas that had been acquired by way of the Award dated 19.10.1970. In Khasra No. 53/6, physical possession of 4-12 (4 *bigha* 12 *biswa*) was taken by the Respondents. The kabza karwai or Possession taking-over Report dated 28.10.1971 specifically notes that physical possession of 4-12 is being taken being vacant land. The rest of the land is 'build-up' area, of which possession can be taken over only later after following the prescribed procedure. The kabza karwai was duly forwarded to the revenue authorities for making entries in revenue records. A copy of the kabza karwai or Possession taking-over Report dated 28.10.1971 has been annexed herewith and marked as ANNEXURE P-3."

4. A copy of the *Kabza Karwai* dated 28th October 1971 is enclosed with the petition as Annexure-P3.

5. It is then stated that when, in 1973, the Delhi Development Authority ('DDA') (Respondent No. 3), sought to demolish nine shops and a

residential room admeasuring 200 sq. yards, the Petitioners came to this Court in W.P.(C) No.113/1973 in which an interim injunction was granted on 22nd May 1973. It is stated that in 1975, the said writ petition was withdrawn on account of suspension of fundamental rights.

6. An entire colony called Guru Ramdas Nagar has come up in the area. This colony was an unauthorised colony and was listed as part of the colonies for whom a scheme of regularization was announced on 19th July 1978 titled “Second step towards regularisation of unauthorised colonies”. A copy of the said scheme has been enclosed with the petition as Annexure-P4 in which Guru Ramdas Nagar figures among other unauthorised colonies.

7. Pursuant to that scheme, the Petitioners submitted a site plan and an affidavit and also deposited Rs.3,150/- towards the development charges with the DDA on 30th September 1978. It is claimed that the DDA sent a receipt by post to Petitioner No.1 after verifying the documents submitted.

8. It is stated that in 1982, the DDA tried to take possession of the land compelling the Petitioner No.1 to file Suit No.81/1982 titled “***Harbhagwan Batra & Anr. v. DDA & Ors.***” for permanent injunction to restrain the DDA from interfering with the possession of the Petitioners. It is stated that the Sub-Judge, First Class, by an order dated 9th March 1984, based on the report of the Local Commissioner, directed the parties to maintain *status quo* and this was confirmed on 16th November 1985.

9. It appears that another suit, being Suit No.743/1984, was again filed for more or less similar reliefs and both suits were consolidated. Reference was

then made to certain proceedings in this Court by way of Civil Revision Petition No.651/1991. It is stated that the consolidated suits were dismissed by the trial Court on 1st August 2002, holding that the Petitioners could not challenge the acquisition proceedings by way of a suit. The further appeals against the said order were also dismissed by the learned Additional District Judge on 31st October 2003.

10. In RSA No.5/2004, on 24th July 2013, liberty was granted to the Petitioners to withdraw the appeal and file an appropriate writ petition, as the primary challenge of the Petitioners was to the discriminatory practice by the Respondents. This led to the Petitioners filing W.P.(C) 4887/2013 in this Court on 30th July 2014 with the prayer for regularization of the 200 sq. yards of land. From the copy of the W.P.(C) No.4887/2013, enclosed as Annexure – C20. The LAC filed a reply in the said writ petition where, *inter alia*, it was averred as under:

“The land of the Petitioners bearing Khasra No. 53/6 total area ad measuring 4 bigha and 16 biswa of village Khureji Khas i/i/as acquired award No. 22/70-71 (Supp). The possession of the large area of the land involved in this notification has already been taken over by the Government and handed over to the beneficiary. It is further submitted that the possession of Khasra No. 53/6 (4-12) was also taken over and handed over to DDA on 28.10.1971.”

11. The LAC also took the plea that “the objection regarding the regularization of the colony has no bearing upon the acquisition proceedings and objection of this nature has already been rejected by this Hon'ble Court”.

12. With effect from 1st January 2014, the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation, and Re-settlement Act 2013 came into force. When W.P.(C) 4887/2013 was listed before the Court on 22nd December 2015, the following order came to be passed:

“Learned counsel for petitioners wishes to withdraw the present writ petition with liberty to file appropriate proceedings under Right to Fair Compensation & Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013. With the aforesaid liberty, present writ petition and applications stand disposed of.

To facilitate filing of an alternative proceeding, the interim order passed by this Court on 2nd August, 2013 is directed to continue to operate till 12th January, 2016. However, it is clarified that this Court has not expressed any opinion on the merits of the case. Rights and contentions of all the parties are left open.”

13. Thereafter, the present writ petition was filed seeking the reliefs as noticed hereinbefore.

14. The case of the Petitioners is that although Guru Ramdas Nagar has been regularised, only the construction over the parcel of land belonging to the Petitioners has not been regularised. In this regard, in the reply filed by the DDA, it is averred in paras 9 to 11 as under:

“9. It is also stated that a writ petition No. 4887/2013 had been filed by the very same petitioners, which has been disposed off on 22.11.2015, with liberty to file under section 24(2) separately. As per direction of Hon'ble High Court, the petitioners surrendered the suit land measuring 550 Sq, yards, out of 750 Sq, Yds to the DDA on 09.01.2014 vide order dated 2nd August, 2013 passed by the Hon'ble High Court in WP(C) No.4887/2013, and the remaining land measuring 200 sq. yds. was under stay. However, now the Petitioners are illegally, fraudulently, contemptuously and maliciously claiming the

whole land i.e. 750 sq. yards, which is wrongful and contrary to the facts and material on record.

10. That the Petitioner himself admitted in para 5(iv) of this petition that the Petitioners were offered compensation by the answering Respondent which was not accepted by the Petitioners, the petition is liable to be dismissed on this ground alone.

10. The Petitioners were very much present at the site at the time when Possession was taken of the land in question by the DDA in accordance with and pursuant to the orders passed by this Hon'ble Court, which is a matter of record. The land under reference was inspected as per plan, submitted by the Petitioners (as above) in this Hon'ble Court and found that 200 sq. yds. (Marked 'A') had been left out, which was under stay. The possession of the rest of the land admeasuring 550 sq. yds. (Marked 'B') has been surrendered by the petitioners to the DDA on 09.01.2014, vide order dated 2nd August, 2013, passed by this Hon'ble Court in the above writ, petition No WP(C) 4887/2013).

11. The Possession Proceedings dated 9.01.2014 were conducted at site in presence of the Petitioners along with the site plan is annexed hereto and is marked as ANNEXURE 'R-1. The Petitioners are guilty of fabricating false pleadings in the present judicial proceedings, hence are also liable to be prosecuted and punished under the relevant provisions of Section 340 Cr. P.C. read with Sections 193 & 199 IPC.”

15. The stand of the DDA is that the present case is not covered under Section 24 (2) of the 2013 Act.

16. The factual position, therefore, is that the Petitioners are still in possession of the land admeasuring 200 sq. yards comprised in Khasra No.53/6, but this is on account of the restraint orders in their favour in the

aforementioned proceedings. From the above narration, it is evident that the case of the Petitioners is actually about the failure on the part of the Respondents to take a decision on regularisation *qua* the land to which the Petitioners lay claim. On this issue, the DDA has not taken a stand in its counter-affidavit.

17. Therefore, the question really is not one of validity of the acquisition proceedings but of regularisation. It appears to the Court, therefore, that although a statement was made on behalf of the Petitioners in this Court in W.P. (C) 4887/2013, about availing their remedy under the 2013 Act and on the basis of which the order dated 22nd December 2015 was passed, the Petitioners in fact do not have a remedy under the 2013 Act. They should pursue their case concerning regularisation in appropriate proceedings.

18. Consequently, notwithstanding the order dated 22nd December 2015, the Petitioners are permitted to institute a fresh writ petition confining their prayer to the question of regularisation. This Court clarifies that it has not expressed any view on the merits of such prayer, which will be dealt with in accordance with law.

19. The dismissal of the present writ petition will not prejudice the case of the Petitioners for such relief if a writ petition for that purpose is hereafter filed. In the meanwhile, it will be open to the Petitioners to again approach both the Government of NCT of Delhi as well as the DDA to take a decision on the plea of regularisation. The status quo order passed by this Court on 11th January 2016 is continued for a period of four weeks from today to

enable the Petitioners to file a fresh petition.

20. The writ petition is accordingly dismissed, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 19, 2018
rd