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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No. 141/2018**

MAHMOOD ALAM KHAN AND ANR.

.... Petitioners

Through: Mr. Arun Kumar Kaushik, Advocate.

versus

UNION OF INDIA AND ORS.

.... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K.K. Kiran Pathak, Mr. Sunil Kumar Jha and Mr. M.S. Akhtar, Advocates for Respondent Nos. 1 & 3.

Mr. Arjun Pant, Advocate for DDA.

Mr. Pushkar Sood, Advocate for Respondent No. 4.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

07.08.2019

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

“(i) issue a writ of certiorari and/or any other writ(s), order(s) or direction(s) of the similar nature declaring the entire acquisition proceedings with respect to land being 200 Sq. Yds. (Petitioner No. 1 has 140 Sq. Yds. & Petitioner No. 2 has 60 out of total land measuring 200 Sq. Yds.) out of total land measuring 3 Bighas 02 Biswas, comprised in Khasra No. 482 (03-02) situated in the revenue estate of Village Madanpur Khadar, Tehsil Kalkaji, New Delhi-110076, to the extent of the aforesaid land of the petitioners, in the interest of justice

(ii) Further pass a writ (s), order(s) or direction(s) in the nature of a writ of mandamus thereby directing the respondents not to interfere with the peaceful possession and enjoyment of the land of the with respect to land being 200 Sq. Yds. (Petitioner No. 1 has 140 Sq. Yds. & Petitioner No. 2 has 60 Sq. Yds out of total land measuring 200 Sq. Yds.) out of total land measuring 3

Bighas 02 Biswas, comprised in Khasra No. 482 (03-02) situated in the revenue estate of Village Madanpur Khadar, Tehsil Kalkaji, New Delhi-110076, to the extent of the aforesaid land of the petitioners, in the interest of justice.”

2. The background facts are that the land in question i.e. 200 sq.yards in Khasra No. 482 situated in Village Madanpur Khadar, Kalkaji, New Delhi (hereafter, ‘subject land’) was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 23rd June, 1989 for the public purpose of “channelization of Yamuna river”. This was followed by a declaration under Section 6 read with Section 17 of the LAA dated 22nd June, 1990. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 20/92-93 on 19th June, 1992.

3. As far as the ownership of the Petitioners in the subject land goes, the series of transactions by which the Petitioners came upon the land have been set out. It is stated that the recorded owners of the subject land were Shri Pal, Smt. Kalawati, Smt. Kishan Devi, Smt. Resho, Smt. Kishni, Smt. Rano, Smt. Shyamo, Smt. Munni, Ganga Devi, Devender Lakshman Singh, Dan Chand, Dharam Singh, Tejpal Singh, Shish Pal and Yashpal. It is averred that the Petitioners purchased the subject land by way of a General Powers of Attorney (‘GPAs’) dated 13th October, 2016 and 16th October, 2016. A copy of the *Khatauni* for the year 1981/1982 and the aforesaid GPAs have been annexed with the petition.

4. It is averred in the petition that possession of the subject land has not been taken. It is further averred that since purchasing the subject land, the

Petitioners have been in possession of the subject land. It is also averred that compensation has not been paid to the Petitioners or the recorded owners. Thereafter, the petition straightaway refers to the enactment of The Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation & Resettlement) Act, 2013 ('2013 Act') and the Petitioners' entitlement to a declaration of deemed lapsing under Section 24 (2) on the ground that neither has possession been taken nor compensation paid.

5. Counter affidavits have been filed on behalf of the LAC and the DDA. In the counter affidavit of the LAC, it is averred that the Petitioners have not placed on record any document to demonstrate title, rights or ownership over the subject land. In this regard, it has also been averred that the Petitioner has claimed title over the said land by way of a GPA, which being an unregistered instrument cannot be said to be conferring valid title to the Petitioners. Reference has been made to the judgment of the Supreme Court in *Suraj Lamp Industries Pvt. Ltd. v. State of Haryana (2009) 7 SCC 363*. It is averred that possession proceedings in respect of Khasra Nos. 482 (03-06) was taken on 3rd December, 2012. It is further averred that as per the *Naksha Muntazamin*, compensation of Rs. 54,57,297/- was sent to the Additional District Judge (ADJ) under Section 31 of the LAA by way of a cheque [cheque no. 005221]. It is also averred that the acquisition proceedings are complete and that they cannot be challenged at this stage.

6. In the counter affidavit filed on behalf of the DDA, it is averred that possession of the subject land was taken on 3rd December, 2012. A copy of the possession proceedings has been annexed with the counter affidavit. It is

further averred, as regards compensation, that a compensation of Rs.63,20,244.15 in respect of the award was paid to the L&B by way of cheque [cheque no. 767216] dated 19th August, 2014. In this context, reference has been made to 'Statement A' of the LAC to aver that the said amount has been deposited in the Court of the ADJ, Saket on 28th October, 2014. A copy of the statement has been annexed with the counter affidavit.

7. Rejoinder has been filed by the Petitioner to the counter affidavits of the LAC and the DDA. In the rejoinder to the counter affidavit of the LAC, the averments of the LAC have been denied and the contents of the petition reiterated. Similarly, in the rejoinder to the counter affidavit of the DDA, the averments of the DDA have been denied and the contents of the writ petition reiterated.

8. In the course of the hearing, it transpired that area in which the subject land is situated i.e. Shram Vihar Colony, Abul Fazal Enclave (Main), Kalindi Kunj Road Okhla is an unauthorized colony. On the website of the Department of Urban Development, GNCTD a list of unauthorized colonies awaiting regularization has been put up. Abul Fazal Enclave (Main), Kalindi Kunj Road, Okhla figures at S.NO 366 on that list. Therefore, there can be no doubt that the subject land forms part of an unauthorized colony. This Court has in a series of orders, consistently held that where the property in question is part of an unauthorized colony, no relief under Section 24 (2) of the 2013 Act can be granted.

9. It must also be noted that in respect of the award impugned in the present petition, this Court has by a detailed order dated 11th February, 2019 in ***Mrs. Rita Khanna v. Union of India*** [W.P.(C) 71/2018] declined to grant the relief of a declaration of deemed lapsing as regards the instant colony.

10. The legal position has been summarized by the Court in ***Mool Chand v. Union of India (2019) 173 DRJ 595 (DB)*** where it was held in paragraphs 48, 49 and 50 as under:

“48. The third aspect of the case is that the Petitioner admits that the land in question is part of an unauthorized colony. The very basis for seeking regularization of an unauthorized colony is that it is located on land which belongs either to the public or to some other private parties. The Petitioners would therefore not have the locus standi to seek a declaration in terms of Section 24 (2) of the 2013 Act in such cases since the very fact that they have sought regularization on the basis that they are in unauthorized colony would be an admission that they do not otherwise have any valid right, title or interest in the land in question.

49. This Court has by order dated 19th December 2018 in WP(C) No.190/2016 (*Harbhagwan Batra v. Govt. of NCT of Delhi*) and order dated 8th January 2019 in WP(C) No.10201/2015 (*Gurmeet Singh Grewal v. Union of India*) negatived similar pleas by the Petitioners who were trying to seek similar declaration of lapsing even while admitting that they were pursuing regularisation of an unauthorised colony.

50. In a decision dated 10th January 2019 in W.P. (C) 3623 of 2018 (*Akhil Sibal v. Govt. of NCT of Delhi*) this Court observed in this context as under:

“18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting

regularization orders. A large portion of these colonies are by way of encroachment on public land, some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premise on which such regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those structures. That very basis gets contradicted as some of them try to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable.”

11. The above decision has been followed and the legal position has been reiterated by this Court in an order dated 25th January, 2019 in W.P.(C) No.3438/2015 (*Krishna Devi v. Union of India*). As clarified in those orders, the dismissal of the present petition will not come in the way of the Petitioner pursuing the claim for regularisation of the unauthorised colony in question.

12. For the aforementioned reasons, the reliefs sought in the petition cannot be granted.

13. The petition is dismissed. The interim order passed on 9th April 2018 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 07, 2019

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