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

+ **W.P.(C) 1403/2019**

SMT. JASODA

..... Petitioner

Through: Mr. Udayan Jain, Mr. Amit Sherawat
and Mr. Kamal Sharma, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.
Mr. Arun Birbal, Advocate for DDA.
Mr. Harish Kumar Garg, Advocate
for R-1.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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11.02.2019

CM APPL. 6407/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

W.P.(C) 1403/2019 & CM APPL. 6406/2019

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

“a. Issue a writ of certiorari and/or any other Writ, order or direction of the similar nature declaring the entire acquisition with respect to the land comprised in Khasra no.272(6-19) situated in Revenue Estate of Village Jasola, NCT of Delhi having lapsed qua to 1/4th share of the petitioner in the said land and further quashing the impugned Notification No.F-4(9)/64/ L & H dated 06.04.1964 Issued under Section 4 of the Land Acquisition Act, 1894 and Notification f-4(9)/64/L & H dated

07.12.1966 issued under section 6 of the Land Acquisition Act, 1894 and the relevant extract of the Award No.4/97-98 with respect of the land comprised in Khasra Nos.272(6-19) situated in the Revenue Estate of Village Jasola, NCT of Delhi; and

b. Issue a writ of mandamus and/or any other writ order and direction to the similar nature issuing directions to the respondents not to disturb or hinder the possession and enjoyment of the Petitioner over 1 Bigha 14 Biswas of the land comprised in Khasra nos.272(6-199 situated in revenue estate of Village Jasola, NCT of Delhi and.

c. To pass any other order or directions, as deemed fit and proper in the facts and circumstances of the case in favour of the Petitioner and against the Respondents.”

3. Para 2 of the writ petition reads as under:

“2. That the present Writ Petition is being filed by Smt. Jasoda (hereinafter referred to as "the Petitioner") on behalf of Sh. Babulal who is $\frac{1}{4}$ co-owner in the said land. Sh. Babulal executed a General Power of Attorney in Blood Relation dated 30.08.2016 to his sister i.e. the Petitioner herein. The present Petition is to humbly seek the relief available to the Petitioner by virtue of Section 24(2) of the New Land Acquisition Act. **The Petitioner is also entitled to relief under the Regulation for Regularization of unauthorized Colonies** in Delhi-2008 and National Capital Territory of Delhi S (Special Provision) Second Act, 2011 made effective up to 31.12.2017.” (emphasis supplied)

4. Further in ground M of the writ petition it is averred as under:

“M. Because this Hon'ble Court in series of cases started from *Common Cause v. Union of India* (W.P.(C) No.4771/1993), *Sangam Vihar Vikas Manch v. Union of India* (W.P.(C) No.905/2005, *Saraswati Devi v. DDA* (W.P.(C) No.915/2013), *Bihari Lai Jalan v. DDA* (W.P.(C) No.21034 & 3678/1992) has consistently granted relief to the property owners in unauthorized colonies of protection from punitive action in form of demolition

or sealing till the decision on the issue of regularization of the unauthorized colonies finally taken by the authorities. This Hon'ble Court has also consistently held that the respondent cannot adopt a pick and choose policy from making punitive action. The said orders of this Hon'ble Court applies in the case of the petitioner with full force as **in the petitioner's case also his property forms part of an unauthorized colony**, where the issue of regularization is pending before the Authority.” (emphasis supplied)

5. From the above averments, it appears that the property in question is part of an unauthorized colony. Considering that this Court has in a series of orders including the orders dated 10th January, 2019 in W.P(C) No.3623/2018 (**Akhil Sibal v. GNCTD**) and 17th January 2019 in WP(C) No. 4528/2015 (**Mool Chand v. Union of India**) held that in respect of properties that form part of an unauthorized colony, awaiting regularization, no relief of declaration of deemed lapsing of land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act') can be granted, this Court had specifically inquired from the counsel for the Petitioner if indeed the land in question in the present case was also a part of an unauthorized colony. The case was passed over for that purpose.

6. When the case was called out again, learned counsel for the Respondent-LAC informed the Court that she had telephonic instructions to the effect that the property was in fact part of an unauthorized colony. Learned counsel for the Petitioner, on the other hand stated that his instructions were to the contrary.

7. When asked on what basis the above averments were made both in para 2 and ground M of the writ petition, counsel for the Petitioner volunteered that they were made by mistake. He also referred to an earlier W.P.(C) 7202/2015 (***Nirmal Singh v. Union of India***) which concerned another portion of the same land being 1/4th share in khasra 272 min (6-19) in village Jasola, a similar averment had been made. He states that, therefore, in the present petition, the same averments were made. He also referred to the order passed by this Court on 14th March 2017 in the said W.P.(C) 7202/2015 granting the relief of declaration of deemed lapsing of land acquisition proceedings under Section 24 (2) of the 2013 Act in respect of that parcel of land. He, therefore, urged that the Petitioner too is entitled to the same relief.

8. The Court finds the stand of the Petitioner to be contradictory. On the one hand, the Petitioner is seeking to rely on the order dated 14th March 2017 in W.P. (C) 7202/2015 to seek similar relief. On the other hand, he states that the averments in para 2 and Ground M, which are supposedly similar to the averment in W.P. (C) 7202/2015, that the land forms part of an unauthorized colony, is a mistake. There is, therefore, confusion on the side of the Petitioner whether in fact the land in question forms part of an unauthorized colony.

9. This Court notes that at the time when the order in ***Nirmal Singh v. Union of India*** (*supra*) was passed by this Court, the judgments of the Supreme Court in ***Mahavir v. Union of India*** (2018) 3 SCC 588 and ***Indore Development Authority v. Shailendra*** (2018) 3 SCC 412 had not been

delivered. In terms of those judgments, it is incumbent on a person seeking relief under Section 24 (2) of the 102 Act to properly explain the delay in approaching the Court for that relief. In the present case the notification under Section 4 of the Land Acquisition Act, 1894 (LAA) was issued on 6th April 1964, the declaration under Section 6 of the LAA on 7th December 1966 followed by the impugned Award No.4/97-98 being passed on 5th December 1997. Yet, there is no explanation whatsoever in the petition for the inordinate delay in approaching the Court for relief.

10. The further difficulty, not noticed in ***Nirmal Singh v. Union of India*** (*supra*), is that the land in question is part of an unauthorized colony as pleaded in that petition. In such circumstances, in view of the decisions in ***Akhil Sibal v. GNCTD*** (*supra*) and ***Mool Chand v. Union of India*** (*supra*) the relief under Section 24 (2) cannot be granted.

11. Therefore, the prayer in the present petition requires to be rejected on two grounds: one, that it is barred by delay and laches in light of the judgments of the Supreme Court in ***Mahavir v. Union of India*** (*supra*) and ***Indore Development Authority v. Shailendra*** (*supra*) and the other that the land in question is part of an unauthorized colony.

12. The petition along with the pending application is accordingly dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 11, 2019/nk