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

+ **W.P.(C) 2132/2019 & C.M. APPL. 9980/2019**

SH. SUNIL KUMAR DHANKAR & ANR. Petitioners

Through: Mr. B.S. Yadav, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Mr. Arjun Pant for DDA
Mr. Yeeshu Jain, Standing Counsel
and Ms. Jyoti Tyagi for L&B/LAC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

06.03.2019

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1. The prayers in the petition read as under:

“(i) to issue an appropriate writ, order or directions, declaring the entire acquisition proceedings under the old Land Acquisition Act, 1894, in respect of the aforesaid land bearing khasra no. 265(4-17), situated in Revenue Estate of Village Saidul Ajaib wherein the petitioners have purchased with possession, the entire 1/6th share each of the recorded owners/bhumidars namely Maha Singh and Bhim Singh, to have lapsed, firstly by virtue of judgment dated 15.05.1989 of the Hon'ble High Court in CWP No. 1250/89, titled as *Mahinder Singh & Ors. v. UOI & Ors.* And thereafter also by virtue of Section 24(2) of the New L.A. Act the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”;

(ii) pass any further/additional order(s)/relief(s) in favour of the petitioners, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The background facts are that land in question i.e. Khasra No. 265 (4-17) located in the revenue estate of Village Saidulajaib, Delhi was notified under Section 4 of the Land Acquisition Act (LAA), 1894 on 5th November 1980.

3. This was followed by declaration under Section 6 of LAA on 21st May 1985 that the land was required for the public purpose of “planned development of Delhi”. The Land Acquisition Collector (LAC) passed the impugned Award No. 13/1987-88 on 20th May 1987.

4. It is stated by the Petitioners’ that despite the announcement of the said Award no. 13/87-88, neither compensation was paid to the said recorded owner, under Section 31(1) of the LAA nor was it tendered/deposited in Court under Section 31(2) of the LAA. It is also stated that no physical possession at the spot was taken by the Respondents.

5. It is stated in para 6 of the writ petition that the aforesaid constructed land/property of the petitioners is part of a built-up colony known as 'Kohinoor Enclave, Western Marg, Saidulajaib, New Delhi which forms part of the list of colonies to be regularized released by the Department of Urban Development of the GNCTD.

6. As far as the Petitioners are concerned, it is stated in the petition that the

acquisition proceedings with respect to Award No. 13/87-88 were challenged by the recorded owners in this court in CWP No. 1250/89 and the same were quashed by a common judgment dated 15th May 1989 titled '*Balak RamGupta v. Union of India*'. It is stated that thereafter, in 2006, the recorded owners sold their shares to the Petitioners vide registered General Powers of Attorney (GPAs).

7. Enclosed as annexures to the petition are 'the sale documents'. A close scrutiny of the documents shows that the property in question purportedly was purchased through two GPAs dated 12th April 2006 and 18th April 2006. Apart from this not being a valid interest instrument for transfer of title, it appears that the Petitioner, having full knowledge of the status of the land in question, and without taking permission from the competent authority, in terms of the Delhi Land (Restriction of Transfer) Act, 1972 entered into the said transaction.

8. In the petition, it is disclosed that Petitioners are not the recorded owners and have purchased the subject land through the aforementioned documents, and subsequently built a house on the land. The Petitioners even state in para 10 of the petition that they are unaware if any compensation was paid to the recorded owners of the land. The Petitioners then go on to state that after passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act'), they are entitled to the relief under Section 24 (2) thereof since no compensation has been paid to them and the physical possession of the land in question remains with them.

9. No counter affidavit has been filed by the LAC or the DDA. The Petitioners claim that they are in physical possession of the subject land and have built up boundary walls around the said land in order to protect their possession and title over the aforesaid purchased share of the land.

10. From the petition, therefore, it is plain that there were a series of GPAs, none of which was a legally valid document as regards ownership and title, which form the basis of the Petitioners' claim of 'ownership' of the property in question. They are also in the teeth of the Delhi Lands (Restrictions on Transfer) Act, 1972 and, therefore, confer no valid legal title or interest for the lands in question.

11. In the course of the hearing, it transpired that "Kohinoor Enclave" located in Village Saidulajaib is one of the unauthorized colonies in respect of which a provisional regularization certificate has been issued. On the website of the Department of Urban Development of the GNCTD, the complete list of unauthorized colonies in respect of which tentative application forms and tentative layout plans had been submitted and which are awaiting regularization has been put up. Clearly, therefore, the property in question forms part of the unauthorized colony. This situation was not envisaged in the decision in *GNCTD v. Manav Dharam Trust (2017) 6 SCC 751* relied upon by the Petitioners. It is, therefore, of no assistance to them.

12. 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. The legal position has been summarized by the Court in a decision dated 17th January, 2019 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 unauthorised colony. The very basis for seeking regularisation of an unauthorised 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 regularisation on the basis that they are in unauthorised 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.”

13. 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 Petitioners’ pursuing their claim for regularisation of the unauthorised colony in question.

14. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The pending application is also disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

MARCH 06, 2019

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