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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4415/2019, CM APPL. 19646& 19647/2019

SMT. SAVITRI DEVI

..... Petitioner

Through

Mr. Naman Raj Thakur & Mr. Anuj
Kr. Ranjan, Advocates

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through

Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advocates for Respondent/LAC/
L & B
Mr. Sumeet Pushkera, Standing
Counsel with Mr. Devanshu for DJB

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

26.04.2019

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

“(i) Issue a Writ of Certiorari or any other Writ in the nature of Certiorari thereby quash the impugned Award No. 2/2009-2010(NE) dated 31.08.2009 passed by respondent no. 1 in respect to land admeasuring 0.07 Biswa falling in Khasra 165, situated at Village- Chauhan Patti, Sabhapur, Delhi;

(ii) Issue, a Writ of Mandamus or any other Writ of Mandamus directing the Respondent No. 2 to restrain themselves from taking possession and carrying out any construction activity over the land admeasuring 0.07 Biswa falling in Khasra 165, situated at Village- Chauhan Patti, Sabhapur, Delhi;

(iii) Pass any other or further orders as this Hon'ble court may

deem fit and proper in the circumstances of this case.”

2. The background facts are that land in question i.e. Khasra No. 165 located in the revenue estate of Village- Chauhan Patti, Sabhapur, Delhi was notified under Section 4 of the Land Acquisition Act, 1894 (LAA) on 5th May 2008.

3. This was followed by declaration under Section 6 of LAA on 22nd August 2008. The Land Acquisition Collector (LAC) passed the impugned Award No. 2/2009-2010(N.E) on 31st August 2009.

4. It is stated in the writ petition it is stated that the land in question was owned by one Shri Hoshiyar Singh. It is stated that vide General Power of Attorney (GPA) and Agreement to Sell (ATS), Hoshiyar Singh sold his property to Shri Surender on 10th May 1993 for a consideration amount of Rs. 1,30,000/-. It is stated that Shri Surender then vide GPA and ATS transferred the subject land to the Petitioner on 24th May 1993 for a consideration amount of Rs. 1,50,000/-.

5. Enclosed as Annexure P-2 and P-3 collectively are the documents. A close scrutiny of the documents shows that the property in question purportedly was purchased through two GPA's dated 10th May 1993 and March 2003. These documents cannot be considered to be valid instruments for transfer of title. Moreover, the Petitioner states that Shri Surender transferred the said property to her on 24th May 1993, whereas, the copy of the GPA attached by the Petitioner is dated March 2003.

6. It is admitted in the petition that the physical possession of the subject land stands was taken over by the LAC and handed over to the DDA on 20th May 2009. It is stated that compensation amount for the said land was Rs. 5,65,050/- which is still lying with the LAC.

7. On 19th December 2014, the Petitioner filed a suit for permanent injunction in Karkardooma Court being CS NO. 4506/15 which was later withdrawn by the Petitioner with liberty to file a fresh action.

8. In the course of the hearing, it transpired that Chauhan Patti in Village Sabhapaur 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. Chauhan Patti is one of those unauthorized colonies, which figures at S.No.1600. Clearly, therefore, the property in question forms part of the unauthorized colony.

9. 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 ***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.”

10. 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.

11. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The applications are also disposed of.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 26, 2019

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