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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 951/2018

NARESH KUMAR

..... Petitioner

Through
versus

Mr. Sujeet K. Mishra, Advocates

STATE OF GNCT & ORS.

..... Respondents

Through

Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advocates for Respondent/LAC/
L & B

Mr. Sanjeev Kumar Singh for
Respondent/DDA

Mr. Amrit Pal Singh for SDMC

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

09.04.2019

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

“a) issue a writ of declaration declaring that the acquisition proceedings in which Award No. 164/86-87 has been made in respect of land comprising in Khasra no. 15/19 (admeasuring 4 Bigha and 03 Biswa), presently plotted in, Mansa Ram Park, Block-E, Uttam Nagar, situated in village Matiala, Najafgarh Road, new delhi-110059, shall be deemed to have been lapsed and as such the said land may be deemed to have not been acquired, and/or

b) issue an appropriate writ, order or direction in the nature of mandamus directing the respondents nos. 4 to 6 not to undertake or initiate any type of construction on the said plot of land as the same being illegal, and /or

c) issue an appropriate writ, order or direction in the nature of mandamus directing the respondent nos. 4 to 6 to not disturb, annoy, interfere in the peaceful possession of the said plot of land as the petitioner being the lawful owner of the said plot of land to secure ends of justice.

e) Ad-interim order of injunction calling upon the respondents not to construct any structure on the said plot of land and / or

f) Rule nisi in terms of prayer (a, b) and (d) and ad interim order in term of prayer (c) above; and/or

AND FOR THIS ACT OF KINDNESS, PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.”

2. The background facts are that land in question i.e. Khasra No. 15/19(200 Sq. yds.) located in the revenue estate of Mansa Ram Park, Block-E, Uttam Nagar, situated in village Matiala, Najafgarh Road was notified under Section 4 of the Land Acquisition Act (LAA), 1894 on 27th January 1984.

3. The Land Acquisition Collector (LAC) passed the impugned Award No. 164/1986-87.

4. As far as the Petitioner is concerned, it is stated in the petition that “the petitioner has acquired interest and ownership in the said plot of land which has now developed into a residential colony after the said area being declared urban by the Respondent State Govt. of Delhi and the colony has been regularized also”. According to the Petitioner, he purchased the property from one Shri Krishan Kumar in the year 2006 i.e. nearly twenty years after the land acquisition award was passed.

5. Enclosed as Annexure P-7 is the copy of the 'GPA'. A close scrutiny of the document shows that the property in question purportedly was purchased through a General Power of Attorney (GPA) on 26th May 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. The original recorded owner, who obviously is not the Petitioner, has not challenged the land acquisition proceedings.

6. In Para 5.3 of the writ petition, the Petitioner states that the amount of compensation as determined by the Respondent was deposited with the treasury but is lying unclaimed as none of the recorded owners were aware of such acquisition proceedings taking place and were under the bonafide belief that they were the owners of the said lands. The Petitioner claims that after passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act'), he is entitled to the relief under Section 24 (2) thereof since no compensation has been paid to him and the physical possession of the land in question remains with him. Further, the date of passing of the Award is more than five years prior to 1st January, 2014 i.e. the date of the 2013 Act coming into force.

7. No counter affidavit has been filed by the DDA or LAC.

8. In the Writ Petition it is clear that the Petitioner is claiming his ownership through a registered GPA, none of which was a legally valid document as

regards ownership and title, which form the basis of the Petitioner's claim of 'ownership' of the property in question. The Petitioner relies on the decision in ***GNCTD v. Manav Dharam Trust (2017) 6 SCC 751*** to claim that he is entitled for reliefs under Section 24 (2) of the 2013 Act.

9. A Status Report has been filed by the SDMC stating that Khasra No. 15/19 was handed over to the SDMC by the DDA on 2nd August 2011. The SDMC started construction of boundary wall but some people approached the SDMC claiming ownership over the said land and SDMC had to stop the work. Since then, the SDMC has not started any work over the subject property.

10. In the course of the hearing, it transpired that Uttam Nagar in Village Matiala, 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. Uttam Nagar is one of those unauthorized colonies, which figures at S.No.1315. 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 (supra)***, which, therefore, is of no assistance to the Petitioner.

11. 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 its decision 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.”

12. 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.

13. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order dated 2nd February 2018 which stood confirmed on 16th April, 2018 is hereby vacated.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 09, 2019

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