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

+ **W.P.(C) 6428/2019 & CM APPL.27297/2019**

HARINDER KUMAR GULATI AND ORS. Petitioners

Through: Mr. AK De, Mr. Zahid Ali, Mr. Rajesh
Dwivedi and Ms. Ananya De, Advocates

versus

DELHI DEVELOPMENT AUTHORITY AND ORS.

..... Respondents

Through: Mr. Vijay Joshi with Mr. Shoumendu
Mukherjee, Advocates for UOI
Mr. Arjun Pant, Advocate for
Respondent/DDA
Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate for
LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE ASHA MENON

ORDER

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31.05.2019

1. The prayers in the present petition, filed by 31 Petitioners, read as under:

“i. Declare that the land acquisition proceeding initiated under the Land Acquisition Act 1894 for acquiring the lands of the petitioners have lapsed and therefore the possession of the lands stood restored to the petitioners.

ii. Quash the land acquisition proceeding initiated for acquiring the land of the petitioners by notification under Section 4 of the Land Acquisition Act 1894 dated 21.03.2003.

iii. Direct the Respondents not to interfere in any manner with the peaceful possession and enjoyment of the lands of the petitioners and/or to act as per the newly promulgated Act being “the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013)' which came into force with effect from 01.01.2014.”

3. It is stated in para 2 of the petition that in the year 1992, one Shri Lalji Kushwaha developed a residential colony namely Utsav Vihar and that the same is in the list of unauthorized colonies awaiting regularization by the GNCTD at serial No.1314. It is further stated in para 3 that the Petitioners are the owners of residential plots of various sizes in the colony Utsav Vihar, village Karala and the various Khasra numbers (hereafter ‘subject land’) being claimed by each of the 31 Petitioners have been listed.

4. It is then stated that the notification under Section 4 of the Land Acquisition Act, 1894 (LAA) was issued on 21st March 2003 followed by declaration under Section 6 LAA on 19th March 2004. The impugned Award No.22/2005-06/DC/(N-W) was issued by the LAC, North-West on 2nd January 2006. It is also stated that pursuant to the passing of the Award, compensation for the subject land was never paid to the original landowners nor to the Petitioners who were subsequent purchasers.

5. In para 7 of the petition, it is submitted that on 21st February 2007, the officials of the Respondents carried out demolition of various houses in Utsav Vihar and prepared a report of *Kabja Karyavahi* on the same date which included the subject land claimed by the Petitioners even though it is claimed that possession of the land has remained with the Petitioners till date. Thereafter, in paras 9 to 39, the details of the subject land claimed by each of the Petitioners and the date on which the same was purchased by ‘agreements to sell’ have been set out. The agreements to sell have all been annexed along with the petition. Thereafter, the petition straightaway refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

(hereafter '2013 Act').

6. Mr. A.K. De learned counsel for the Petitioners has referred to the order dated 7th August 2018 passed by a Division Bench of this Court in W.P. (C) 4160 of 2015 (***Deepak Chhabra & Ors. v. Delhi Development Authority & Ors.***) where in respect of certain other owners of plots in Utsav Vihar, this Court granted relief under Section 24 (2) of the 2103 Act. The Court in that case referred to and followed the decision of the Supreme Court in ***Govt. of NCT of Delhi v. Manav Dharam Trust & Anr (2017) 6 SCC 751***. Accordingly it is contended by Mr. De that the prayer in the present petition should also be allowed likewise.

7. The Court first notices that it is an admitted position in the petition that the Petitioners are not the original recorded owners of the land. They are subsequent purchasers. A close scrutiny of the documents enclosed with the petition reveals that the so-called ownership documents comprise unregistered agreements to sell, affidavit receipts and irrevocable General Power of Attorney (GPAs). In other words, all of these documents are 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.

8. Secondly, the narration in the petition itself reveals that the land/plot in question claimed by the Petitioners forms part of an unauthorized colony. The Court finds that the unauthorized colony is known as Utsav Vihar and figures at Sl.No.309 in the list of unauthorized colonies awaiting regularization as displayed on the website of the Department of Urban Development, GNCTD.

9. In respect of the lands that form part of unauthorized colony this Court has taken the consistent view that no relief under Section 24 (2) of the 2013 Act can be

granted. The legal position has been explained in ***Mool Chand v. Union of India*** 2019 (173) DRJ 595 (DB) where it has been explained 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.”

9. 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*) and the decision dated 26th March 2019 in W.P. (C) 567 of 2015 (*Om Wati v. Govt. Of NCT of Delhi*). In the last mentioned decision it was held:

“Even where the land stands mutated in favour of the Petitioners and they have put up structures, the fact that they have joined the other residents in making a joint application for regularisation of the unauthorised colony in question, would mean that they cannot now seek a declaration that the land acquisition proceedings have lapsed. Having elected to seek regularisation, they cannot reprobate and seek invalidation of the land acquisition proceedings. They must follow the remedy they have opted for earlier to the logical end.”

10. The decision in *Govt. of NCT of Delhi v. Manav Dharam Trust* (*supra*) did not deal with a situation where the lands that stood acquired under the LAA formed part of an unauthorised colony. This is a situation that is perhaps unique to Delhi and this was discussed extensively in *Mool Chand v. Union of India* (*supra*). Following the said decision, this Court has dismissed W.P(C) 10136/2018 (*Mahendra Kumar Singhi v. Union of India and Ors.*) by order dated 27th February 2019. The said writ petition challenged the same Award No.22/2005-06/DC(NW) passed in respect of land falling in Utsav Vihar, village Karala.

11. In the said decision in *Mahendra Kumar Singhi v. Union of India* (*supra*), it was noted that there was a second difficulty in the Petitioners being granted the relief prayed for. The acquisition was for the public purpose of the Rohini Residential Scheme in respect of which the Supreme Court had in SLP(C) No. 16385-16388 of 2012 (*Rahul Gupta v. Delhi Development Authority*) passed

orders on 10th March 2015, 28th January 2016 and 18th October 2016. In the last mentioned order, the Supreme Court directed that if possession of lands acquired for the Rohini Residential Scheme was not handed over to the DDA within 10 days thereof, then the DDA would be deemed to be in possession of such lands.

12. The third reason for this Court dismissing the petition in ***Mahendra Kumar Singhi v. Union of India*** (*supra*), was that it was barred by delay and laches. In view of the decision in ***Indore Development Authority v. Shailendra*** (2018) 3 SCC 412 no relief under Section 24 (2) of the 2013 Act could be granted in such circumstances. It may be noted here that the reference made by a Constitution Bench in ***Indore Development Authority v. Shyam Verma*** (2018) 4 SCC 405 regarding the correctness of the aforesaid decision in ***Indore Development Authority v. Shailendra*** (*supra*) is as regards the extent to which it differs from the earlier view of the Supreme Court in ***Pune Municipal Corporation v. Harakchand Misrimal Solanki*** (*supra*) regarding the tendering of compensation, and on certain other issues but not on the question of petitions seeking declaration under Section 24 (2) of the 2013 Act being barred by laches. This legal position was explained by this Court recently in ***Mool Chand v. Union of India*** (*supra*).

13. For the same three reasons that prevailed with this Court in ***Mahendra Kumar Singhi v. Union of India*** (*supra*), the present petition also requires to be dismissed.

14. The decision in ***Deepak Chhabra & Ors. v. Delhi Development Authority & Ors.*** (*supra*) did not take note of the fact that Utsav Vihar, where the plots in question were located, is an unauthorised colony awaiting regularisation. Further, the decision of the Supreme Court in ***Indore Development Authority v. Shailendra***

(*supra*) was not taken note of. Further, the fact that the acquisition was for the Rohini Residential Scheme in respect of which the Supreme Court had passed a series of orders in ***Rahul Gupta v. Delhi Development Authority*** (*supra*) was also not noticed.

15. For the above reasons, the petition is dismissed. As clarified by this Court in ***Krishna Devi v. Union of India*** (*supra*), the dismissal of this petition would not come in the way of the Petitioners pursuing their application for regularisation of the unauthorised colony in question.

16. The application is disposed of.

S. MURALIDHAR, J.

ASHA MENON, J.

MAY 31, 2019