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

+ **W.P.(C) 1788/2014 & CM APPL. 3722/2014**

AG BLOCK RESIDENCE WELFARE Petitioners
ASSOCIATION & ORS.

Through: Rajiv Kumar Ghawana &
Parveen Kumar, Advocates.

versus

THE UNION OF INDIA & ORS. Respondents

Through: Mr. Ajay Verma, Advocate for
DDA.
Mr. Yeeshu Jain along with
Ms. Jyoti Tyagi, LAC/L&B.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

% **17.07.2019**

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

“a) issue a writ, order or a direction in the nature of certiorari thereby quashing the notification dated 27.10.1999 issued under section 4 of the Land Acquisition Act, 1894 and the subsequent declaration dated 20.3.2013 issued under section 6 of the Land Acquisition Act, 1894; and

b) declare that the acquisition in respect of Khasra no. 56/3, AG Block, Krishan colony, Pehladpur Bangar, Delhi have lapsed as the Section 6 declaration has been issued beyond the prescribed period under law and (in the alternative) in terms of sub-section (2) of section 24 of “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,

2013” and award no.14 of 2002-2003 is of no effect and consequence and, therefore, liable to be quashed; and

c) direct the respondent no.4 to take a final decision on the application of the petitioner no.1 for regularisation of petitioners colony AG Block Krishan Colony, Pehlادpur Bangar, Delhi; and

d) declare that the petitioners are entitled to relief under the provision of National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011; and

e) issue a writ of mandamus thereby directing the respondents not to dispossess the petitioners from their respective properties situated in Khasra no.5613, AG Block, Krishan Colony, Pehlادpur Bangar, Delhi and

f) issue a direction in the nature of prohibition prohibiting the respondents from taking possession of the land of the petitioners situated in Khasra No.56/3, AG Block, Krishan Colony, Pehlادpur, Bangar, Delhi.”

2. The background facts are that the land in question forms part of Khasra No. 56/3, AG Block, Krishan Colony, Pehlادpur Bangar, Delhi (hereafter, ‘subject land’). The subject land was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 27th October, 1999 for the public purpose of the Rohini Residential Scheme. This was followed by a declaration under Section 6 and 17 of the LAA dated 3rd April, 2000. The Land Acquisition Collector (LAC) passed Award No. 14/2002-03 on 8th July, 2002.

3. As far as the Petitioners are concerned, it is stated that they are all “owners/persons interested” who are entitled to challenge the acquisition proceedings pertaining to the subject land. Annexed to the
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petition are documents in connection with the Petitioners' title over the subject land. A perusal of these documents reveals that they are General Power of Attorneys (GPAs) and Agreements to Sell in favour of the Petitioners. Apart from these documents not being valid instruments for transfer of title, it appears that the Petitioners 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 transactions.

4. It is averred in para 4 of the petition that the invocation of Section 17 of the LAA was without application of mind and that the Petitioners were not given an opportunity to file their objections under Section 5-A of the LAA. It is averred that the Petitioners continue to be in possession of the subject land. It is also averred that a writ petition was filed before this Court by persons occupying a colony adjoining the land claimed by the Petitioners, which culminated in judgment of the Supreme Court in Civil Appeal No. 3514-3517 of 2007 dated 21st March, 2012 quashing the Section 6 declaration dated 3rd April, 2000. It is averred that thereafter, a declaration under Section 6 was belatedly issued on 20th March 2013 and that such a declaration was beyond the time period stipulated under the LAA and that the land acquisition proceedings thus stood lapsed. It is stated that after the aforesaid Section 6 declaration was issued, the Government of NCT of Delhi notified a policy for the regularization of "the village abadi areas or unauthorized extensions

to the village abadis and Lal dora”. It is further stated that the Petitioner No. 1 i.e. the RWA of the area applied for regularization in terms of the aforesaid notification.

5. Counter affidavits have been filed on behalf of the LAC and the DDA. In the counter affidavit filed by the LAC it is averred that the petition is liable to be dismissed as the Petitioners have no relation with each other and the petition is liable to be dismissed for misjoinder of parties and on the ground that the petition “has been filed on behalf of association which is not permissible in law”. It is further averred that the Petitioners have not placed on record documents demonstrating ownership, interest or title over the said land and thus, have no *locus* to file the instant petition. It is also averred that the Petitioners have “not got executed any of the registered documents of sale, thus the alleged sale is no sale in the eyes of law”. It is averred that possession of land admeasuring 4 *Bighas* and 12 *Biswas* of the subject land has already been taken. It is stated that compensation has been paid to the recorded owners. It is also averred that the Petitioners have not brought to bear material to demonstrate that they were parties to the previous round of litigation, extensively referred to in their petition.

6. In the counter affidavit filed by the DDA, it is averred that possession of the subject land was taken in accordance with law. It is also averred that compensation was tendered by way of cheque no. 033657 dated 3rd December, 1999 and cheque no. 282364 dated 24th

March, 1999 in respect of land in five villages, including that of village Pehladpur Bangar.

7. Rejoinders have been filed on behalf of the Petitioners to the counter affidavits of the LAC and the DDA. In the rejoinder to the counter affidavit of the LAC, it is averred that the Respondents merely took paper possession of the subject land and the Petitioners continue to remain in possession. It is averred that the physical possession of the subject land is demonstrated from the fact that the Petitioners through their RWA have applied for regularization and that their application is under consideration. It is further averred that the Petitioners are “persons interested” and that such persons can challenge the acquisition proceedings. It is further averred that an Association formed by land owners can file a writ petition representing its members as Section 3 (b) of the 2013 Act contains an inclusive definition. In its rejoinder to the counter affidavit of the DDA, the Petitioners have set out identical averments and reiterated the averments in the writ petition.

8. From the averments in the writ petition itself, it emerges that the subject land forms a part of Krishan Colony in Village Pehladpur Bangar, which is an unauthorized colony and has been granted provisional regularization by a letter of the L&B Department dated 11th September, 2007. It figures at Sl. No. 822 (Regn No. 888) in the list of unauthorised colonies awaiting regularisation put up on the website of the Department of Urban Development, GNCTD. This Court has in a series of orders, consistently held that where the

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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 unauthorized colony. The very basis for seeking regularization of an unauthorized 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 regularization on the basis that they are in unauthorized 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*). However, as clarified therein, the dismissal of the present petition will not come in the way of the Petitioners pursuing the claim for regularisation of the unauthorised colony in question.

10. There is yet another aspect to the matter. From a perusal of the impugned Award pertaining to the subject land and the counter affidavits of the LAC/L&B Department and the DDA, it also emerges that the subject land was acquired for the purpose of the Rohini Residential Scheme. If in terms of the impugned Award, the land was acquired for public purposes of the Rohini Residential Scheme, then by virtue of the order dated 18th October 2016 of the Supreme Court of India in SLP (C) Nos. 16385-16388 of 2012 (*Rahul Gupta v. DDA*) even if on the date of the said order of the Supreme Court, actual physical possession was not with the DDA, if such physical possession was not handed over to the DDA within ten days

thereafter, the DDA would be deemed to be in possession of the lands in question. Therefore, even on the Petitioners' own showing, the possession cannot be said to be with them. In the circumstances, it is not possible to grant the Petitioners relief under Section 24 (2) of the 2013 Act.

11. Consequently, the Court finds no merit in this writ petition and it is dismissed as such. The pending application is also disposed of.

12. The interim order passed by this Court on 21st March, 2014 stands hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 17, 2019/abc