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

+ **W.P.(C) 2371/2017**

RIFAQUAT ULLAH KHAN Petitioner
Through: Mr. Rajiv Kumar Ghawana and
Ms. Akshita Chhatwal, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr. Yeeshu Jain along with Ms. Jyoti
Tyagi, Advocates for LAC/L&B.
Mr. Arun Birbal and Mr. Sanjay
Singh, Advocates for DDA.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **23.07.2019**

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

“a) issue a writ, order or declaration declaring that the entire acquisition proceedings i.e. Section 4 notification dated 23.6.1989, Section 6 declaration is dated 22.6.1990 and the award no.21/92-93 announced on 18.6.1992 in respect of the Petitioner's land/property no.G-84 comprised in Khasra nos. 442 admeasuring 222 sq. yards situated in Shaheen Bagh, Abdul Fazal Enclave, Part-II, in the Revenue Estate of Village Jasola New Delhi-110025 have lapsed in view of sub-section 2 of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; and

b) issue a writ of mandamus directing the respondents not to in any manner whatsoever; interfere with the peaceful enjoyment and

possession of the said land/property presently in possession and occupation of the Petitioner.”

2. The background facts are that the land in question i.e. House No. G-84 admeasuring 222 sq. yards in Khasra No. 442 situated in Shaheen Bagh, Abdul Fazal Enclave, Part-II, in the Revenue Estate of Village Jasola, New Delhi-110025 (hereafter, ‘subject land’) was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 23rd June, 1989 for the public purpose of “planned development of Delhi”. This was followed by a declaration under Section 6 of the LAA dated 22nd June, 1990. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 21/92-93 on 18th June, 1992.

3. As far as the Petitioner is concerned, it is stated in the petition that the owner of the subject land was one Shri Nain Singh and that his son Shri Gopal Singh sold the subject land to one Shri Anuj Mehra and Shri Mohinder Lal Aggarwal by way of General Power of Attorneys (‘GPAs’), Wills and Agreements to Sell (‘ATS’). It is stated that subsequently the land was purchased through the aforesaid instruments and the Petitioner also similarly purchased the said land from one Shri Riyaz Ullah Khan.

4. A copy of the above documents through which the Petitioner claims title over the subject land have been enclosed with the petition. These are unregistered and dated 15th September 2000 i.e. even later than the declaration under Section 6 LAA. Apart from these instruments not being valid instruments 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.

5. It is averred in the writ petition, that out of a total of 13 *Bighas* and 2 *Biswas* forming part of Khasra No. 422, possession of all but the subject land was taken. It is further averred that compensation was not paid to the land owners. It is also stated that during the pendency of the land acquisition proceedings, a policy was framed by the Government of NCT of Delhi and the Central Government for the regularization of Abul Fazal Enclave Part II. It is stated that the subject land is situated in that colony and that the colony is being considered for regularization. Thereafter, the petition straight away refers to the passage of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') and the Petitioner's entitlement to a declaration of deemed lapsing on the ground that neither has possession been taken nor has compensation been paid.

6. A counter affidavit has been filed on behalf of the DDA. It is averred therein that the petition raises highly disputed questions of fact. It is also averred that none of the documents attached by the Petitioner demonstrate title or ownership of the Petitioner over the subject land. It is further averred that physical possession of the subject land "to the extent of (9-02)" was taken and handed over to the DDA by the LAC/L&B Department on 19th January, 2006. As regards compensation, it is averred that a sum of Rs.1,49,67,684/- was paid by way of compensation to one Smt. Sadhna

Gupta by way of cheque [cheque no. 289436] on 9th February, 2013 for land measuring 09-02 in Khasra No. 442 at village Jasola.

7. No rejoinder has been filed on behalf of the Petitioner to the counter affidavit of the DDA. Be that as it may, what emerges from the averments in the writ petition itself is that the subject land is situated in an unauthorized colony, namely Shaheen Bagh, Abul Fazal Enclave II and that the said colony is being considered for regularization. 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 have been submitted and which are awaiting regularization has been put up. Abul Fazal Enclave II, Shahin Bagh is one of those unauthorized colonies, which figures at SL No. 983 (Regn No. 1069). Clearly, therefore, the property in question forms part of an unauthorized colony.

8. 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.”

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*). 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.

10. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order dated 17th March, 2017, as confirmed on 16th March, 2018, is hereby vacated.

S.MURALIDHAR, J.

TALWANT SINGH, J

JULY 23, 2019