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

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W.P.(C) 2591/2015

VISHWANATH AGARWALLA & ANR

..... Petitioners

Through: Mr.Akhil Sachar with Ms.Sunanda
Tulsyan, Advocates.

versus

**THE LT. GOVERNOR, NATIONAL CAPITAL TERRITORY OF DELHI
& ORS**

..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Advocate for
L&B/LAC.
Mr.Dhanesh Relan, Standing Counsel
for DDA with Mr.Komal Sarout &
Mr.Rajeev Jha, Advocates.

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RAJ KUMARI

W.P.(C) 3311/2015

..... Petitioner

Through: Mr.Akhil Sachar with Ms.Sunanda
Tulsyan, Advocates.

versus

**THE LT. GOVERNOR, NATIONAL CAPITAL TERRITORY OF DELHI
& ORS**

..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Advocate for
L&B/LAC.
Mr.Dhanesh Relan, Standing Counsel
for DDA with Mr.Komal Sarout &
Mr.Rajeev Jha, Advocates.

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W.P.(C) 2591/2015 & W.P.(C) 3311/2015

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JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
11.04.2019

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1. These are two petitions arising out of a similar set of facts and seeking similar relief and are accordingly disposed of by the present common order. Nevertheless both petitions were heard separately.

2. For the sake of convenience the facts in WP(C) 2591 of 2015 (*Vishwanath Agarwalla v. The Lt. Governor, National Capital Territory of Delhi*) are referred to first. The prayers in the said petition read as under:

“a) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Notification dated 21.3.2003 being No. F 11(19)/2001/L&B/LA/20112 issued under Section 4 of the Land Acquisition Act, 1894 issued in respect of the land forming part of Village Pehladpur Bangar quash and set aside the same;

b) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the declaration dated 19.3.2004 under Section 6 of the Land Acquisition Act, 1894 quash and set aside the same;

c) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Award No. 06/2005-06/DC(N-W) dated 27.6.2005 (Annexure-C to the Writ Petition) quash and set aside the same;

d) Issue a Writ, Order or direction in the nature of Mandamus and/or a Writ, order or direction in the nature of Mandamus

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calling for the records of the case and after examining the legality and validity of the same direct the Respondents not to interfere/dispossess the Petitioner from their land forming part of Khasra Numbers as indicated in the Schedule-A;

e) Issue a Declaration that the acquisition proceedings with respect to the land of the Petitioner as indicated in Schedule-A be deemed to have lapsed;"

3. According to the two Petitioners i.e. Vishwanath Agarwalla and Sanjay Pandey (Petitioners 1 and 2 respectively) they are the recorded owners and *bhumidars* in physical possession and occupation of the aforementioned land comprised in Revenue Estate of Village Pehlادpur Bangar North-West Delhi.

4. In respect of the acquisition of the land in question a notification under Section 4 of the LAA was issued on 21st March 2003 for the public purposes of the Rohini Residential Scheme. After objections were filed by the Petitioners, a declaration under Section 6 LAA was issued on 19th March 2004. This is followed by Award No.6/2005-06/DC(LW) dated 27th June/12th July 2005 in respect of land admeasuring 1969 bighas 18 biswas out of 2026 bighas 18 biswas in village Pehlادpur Bangar.

5. The case of the Petitioners is that paper possession proceedings were drawn up on 31st August 2005 by the Respondents but actual physical possession of the land in question remained with the Petitioners.

6. The Petitioners filed WP(C) 22688 of 2005 in this Court in which by an

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order dated 13th November 2005 this Court directed parties to maintain status quo. Subsequently, by a judgment dated 9th July 2007 the said writ petition was dismissed. Aggrieved by that order the Petitioners filed SLP (C) 16800-01 of 2007. On 17th September 2007 the Supreme Court passed an order staying the judgment dated 9th July 2007 of this Court.

7. Meanwhile on 11th September 2007 a letter was issued by the Land and Building Department (L&B) of the Govt. of NCT of Delhi exempting the taking over of the lands falling within the boundaries of unauthorized colonies. It is averred in para 6 (L) of WP (C) 2591 of 2015 as under:

“6 (l) The Petitioner's land which falls under Registration No. ELD 89 was granted a certificate of provisional regularization. Copy of the Provisional Certificate dated 17.9.2008 granted by the Government of NCT of Delhi is annexed and marked hereto as ANNEXURE-I.”

8. On 11th February 2015 the Supreme Court dismissed the SLPs but granted liberty to the Petitioners to seek remedies under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act'). The relevant portion of the order passed by the Supreme Court in the said SLP reads thus:

“However, we grant liberty to the petitioners, if they may so desire, to make appropriate application (s) as provided under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, or under Section 48 of the Land Acquisition Act, 1894, before the appropriate forum/High Court within one month from today, as applicable in the facts of respective cases before us, if not already filed.”

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9. Pursuant to the leave granted by the Supreme Court the present petitions were filed on 10th March 2015. When the petition came up for hearing on 17th March 2015, this Court directed parties to maintain status quo with regard to the nature, title and possession of the subject land. This interim order was confirmed on 1st October 2018.

10. As far as the companion WP(C) 3311 of 2015 by Raj Kumari, the prayers in the said writ petition are more or less similar and read as under:

“a) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Notification dated 21.3.2003 being No.F11(19)/2001/L&B/LA/20112 issued under Section 4 of the Land Acquisition Act, 1894 issued in respect of the land forming part of Village Pehladpur Bangar quash and set aside the same;

b) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the declaration dated 19.3.2004 under Section 6 of the Land Acquisition Act, 1894 quash and set aside the same;

c) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Award No. 06/2005-06/DC(N-W) dated 27.6.2005 (Annexure-C to the Writ Petition) quash and set aside the same;

d) Issue a Writ, Order or direction in the nature of Mandamus and/or a Writ, order or direction in the nature of Mandamus calling for the records of the case and after examining the legality and validity of the same direct the Respondents not to interfere/dispossess the Petitioner from their land forming part of Khasra Numbers as indicated in the Schedule-A;

(G) (B)

e) Issue a Declaration that the acquisition proceedings with respect to the land of the Petitioner as indicated in Schedule-A be deemed to have lapsed;"

11. Schedule 'A' to the petition reveals that the land is a half share of 1 bigha 12 biswas

"in Khasra No. 50/4 (0-08), 50/7(0-08), 50/8 (0-06), 50/9 (0-02) and 50/14 (0-08) situated in the area of Village Pehlادpur Bangar, National Capital Territory of Delhi, situated in the area of Village Pehlادpur Bangar, National Capital Territory of Delhi."

12. The Petitioner Raj Kumari claims to be the recorded owner of the aforementioned land. his land was also sought to be acquired by the same Section 4 and Section 6 notifications and Award No.6/2005-06/DC(LW) dated 27th June/12th July 2005. Raj Kumari stated to have filed WP(C) 17274 of 2005 in this Court challenging the land acquisition proceedings which came to be dismissed on 9th July 2007. In this case also it is claimed that the Supreme Court on 11th February 2015 dismissed the SLP with liberty to the Petitioner to seek relief under the 2013 Act. In this petition also it is disclosed that on 24th March 2008 a notification was issued by the DDA with regard to regularisation of unauthorised colonies and that the Petitioners' land which falls under registration No.ELD 89 was granted certificate of provisional regularisation on 17th September 2008.

13. In this writ petition also on 7th April 2015 status quo order was passed by this Court which interim order stood confirmed on 1st October 2018.

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14. When these two petitions came up for hearing on 22nd January 2019 counsel for the Petitioners sought leave to produce copies of the SLPs filed by the two sets of Petitioners. Today, Mr. Akhil Sachar, learned counsel appearing Petitioners, has produced a copy of SLP(C) 12534-611 of 2007 which covers the case of Vishwanath Agarwalla. He is unable to produce the SLP paper book concerning the other Petitioner Raj Kumari but states that a similar SLP was in fact filed on her behalf as well. In both SLPs there was a disclosure made of the fact that the properties in question formed part of unauthorised colony.

15. Mr. Akhil Sachar states that he is conscious of the law explained by this Court in *Mool Chand v. Union of India 2019 (173) DRJ 595 (DB)* but seeks to distinguish its application to the present case on the ground that under a 'New Revised Handbook on Modified Master Plan for Delhi 2000-21' the colony in Pehlادpur Bangar has been identified as 'non-conforming cluster' with industrial concentration having more than 70% plots with industrial activities for 'redevelopment'. In other words, it is submitted that since the entire colony is earmarked for redevelopment, this Court should not reject the prayers of the Petitioners.

16. Notwithstanding that the above unauthorized colony may have been identified for redevelopment, the fact remains that it is still an unauthorized colony in respect of which a provisional regularisation certificate has been issued. The Supreme Court, when it granted liberty to the Petitioners to seek remedies under 2013 Act, by no means had any occasion to decide whether the Petitioners would be entitled to such reliefs in view of the fact that the

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properties in question formed part of an unauthorized colony. The mere fact that the Supreme Court permitted the Petitioners to seek remedies under the 2013 Act did not mean that it held that the Petitioners were in fact entitled to such relief. The Petitioners would have to still satisfy the High Court that their case is different from cases of several other Petitioners whose properties formed part of unauthorized colonies and were seeking similar relief which has been rejected by this Court.

17. Mr. Akhil Sachar is unable to show how the present cases are any different from those Petitioners whose cases were rejected earlier by this Court as is evident from the following passages in ***Mool Chand v. Union of India***:

“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.

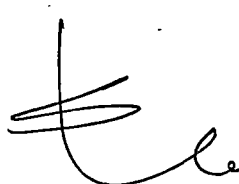
49. This Court has by order dated 19th December 2018 in WP(C) No.190/2016 (***Harbhagwan Batra v. Govt. Of NCT of Delhi***) and order dated 8th January 2019 in WP(C) No.10201/2015 (***Gurmeet Singh Grewal v. Union of India***) negatived similar pleas by the Petitioners who were trying to seek similar declaration of lapsing even while admitting that they were pursuing regularisation of an unauthorised colony.

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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.”

18. Consequently, the Court finds no merit in either of these writ petitions and they are dismissed as such. The interim order passed by this Court on 17th March 2015 in WP(C) 2591 of 2015 and 7th April 2015 in WP(C) 3311 of 2015, both of which stood confirmed on 1st October 2018 stand hereby vacated.


S.MURALIDHAR, J.


I.S.MEHTA, J.

APRIL 11, 2019

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