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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 3328/2015

M/S GOLDEN CASHEW

.....Petitioner

Through: Mr. Akhil Sachar & Sunanda
Tulsyan, Advocates

versus

THE LT. GOVERNOR, NCT OF DELHI & ORS. .Respondents

Through: Mr. Yeeshu Jain along with
Ms. Jyoti Tyagi, Advocates for
LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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16.07.2019

1. The prayers in the present 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 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.”

2. 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 Petitioner, a declaration under Section 6 of the LAA was issued on 19th March 2004. The Land Acquisition Collector (‘LAC’) passed an 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 Pehladpur Bangar.

3. According to the Petitioner, it is the recorded owner of the piece of land admeasuring 1440 square yards out of Khasra No. 50/13 min situated in the area of Pehladpur Bangar, Delhi. The case of the Petitioner 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 Petitioner. The Petitioner further avers that compensation under the LAA has not been paid to it.

4. The Petitioner filed W.P.(C) 22688 of 2005 in this Court in which by an 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 Petitioner

filed SLP (C) 12534-12611 of 2007. On 3rd August, 2007 the Supreme Court passed an order staying the judgment dated 9th July, 2007 of this Court.

5. 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 the writ petition as under:

“6(1) 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.”

6. On 11th February 2015 the Supreme Court dismissed the SLP but granted liberty to the Petitioner 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.”

7. Pursuant to the leave granted by the Supreme Court the present petition was filed on 10th March, 2015. When the petition came up for hearing on 7th April, 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 2nd November, 2017.

8. Counter affidavits have been filed on behalf of the LAC and the DDA. In the counter affidavit filed by the LAC, it is stated that the Petitioner has procured the sale deed/ right of the land in question through one Shri Hari Ram Goyal and that Shri Hari Ram Goyal is not the recorded owner as per the revenue records. Accordingly, it is averred that the Petitioner cannot challenge the present land acquisition proceedings. It is further averred that possession of the land was taken and handed over to the DDA. It is also averred that the recorded owner is the *Gaon Sabha*. It is stated that “compensation however could not be paid.”

9. In the counter affidavit filed on behalf of the DDA, it is stated that the possession of the land bearing Khasra No. 50/13 admeasuring 4-10 was taken and handed over to the DDA on 31st August, 2005. It is further stated that possession of the remainder of land could not be taken due to “residential houses, factories, Kotha Jat along with boundary wall, etc”. A copy of the possession proceedings has been annexed. It is also averred that an amount of Rs. 80,40,75,004/- was disbursed to the LAC/L&B Department vide cheque No.074064 dated 9th August, 2005 as compensation for the acquisition of Village Pehladpur Banger. It is averred that the Petitioner has no right, title or interest over the land in question.

10. The Petitioner has filed a rejoinder to the counter affidavit of the LAC. It is averred therein that “the mere fact that the Petitioner has placed on record a registered sale deed signifies that there has been a no-objection issued by the Respondents/Tehsildar qua the sale transaction”. The Petitioner further avers that it cannot be denied that the Petitioner is in physical possession as the Petitioner has been paying electricity bills of

the premises on the land in question. Further, the Petitioner reiterated the averments set out in the writ petition.

11. From the averments in the writ petition itself, it emerges that the subject land forms part of 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 must be noted that in respect of the same land acquisition proceedings concerning village Pehladpur Bangar, this Court dismissed a batch of writ petitions seeking similar reliefs in W.P. (C) 2591/2015 and W.P.(C) 3311/2015 by order dated 11th April, 2019. In a series of orders, this Court has 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.

12. The legal position has been summarized by the Court in a decision dated 17th January, 2019 in W.P.(C) No.4528/2015 (***Mool Chand v. Union of India***) 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.”

13. The Supreme Court, when it granted liberty to the Petitioner to seek remedies under 2013 Act, by no means had any occasion to decide whether the Petitioner would be entitled to such reliefs in view of the fact that the 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 Petitioner 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. The Petitioner has not been able to demonstrate that its case is different from Petitioners whose cases were rejected earlier by this Court as is

evident from the foregoing passages in *Mool Chand v. Union of India* (supra).

14. 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 Petitioner's own showing, the factual position regarding possession is not clear. In the circumstances, it is not possible to grant the Petitioner any relief under Section 24 (2) of the 2013 Act.

15. Consequently, the Court finds no merit in this writ petition and it is dismissed as such. The interim order dated 7th April, 2015 as confirmed on 2nd November, 2017 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 16, 2019

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