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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3396/2016

DEVINDER KUMAR

..... Petitioner

Through Mr. Akhil Sachar, Advocate

versus

LT. GOVERNOR OF NCT OF DELHI & ORS. Respondents

Through Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advocates for Respondent/LAC/
L & B
Mr. Arun Birbal, Mr. Ajay Birbal for
DDA

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE PRATEEK JALAN

ORDER

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08.05.2019

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. 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 illegality 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-(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. The background facts are that land in question i.e. Khasra No. 50/8, located in the revenue estate of Village Pehladpur Bangar, National Capital Territory of Delhi was notified for acquisition under Section 4 of the Land Acquisition Act (LAA), 1894 on 21st March 2003.

3. This was followed by declaration under Section 6 of LAA on 19th March 2004 stating that the acquisition was for the public purpose of the Rohini Residential Scheme. The Land Acquisition Collector (LAC) passed the impugned Award No. 06/2005-06/DC (N-W) on 27th June 2005/ 12th July 2005.

4. The Petitioner states that he is the recorded owner of a piece of land admeasuring half share of 1 Bigha 6 Biswa in Khasra No. 50/8 situated in the area of Village Pehladpur Bangar, National Capital Territory of Delhi.

The Petitioner purchased the said property through a registered Sale Deed dated 21st August 1987 and is still in possession of the subject land and has not received compensation for the said acquisition.

5. The Petitioner filed W.P. (C) No. 23286/2005 before this court titled ***Devinder Kumar v. Union of India*** in which by order dated 9th December 2005 a Division Bench (DB) of this Court directed the parties to maintain *status quo*. The DB later dismissed the said writ petition by judgment dated 9th July 2007. The Petitioner then filed SLP(C) No. 12534-12611 of 2007 before the Supreme Court. By an interim order dated 3rd August 2007 the Supreme Court directed parties to maintain *status quo* only with respect to possession. It was made clear that in the meanwhile all steps could be taken by the DDA up to the stage of possession, however they could not demolish any structure that was built. The Supreme Court dismissed the SLP by order dated 11th February 2015 with liberty to Petitioner to file application under Section 24 (2) of the 2013 Act.

6. In the counter affidavit filed by the LAC, it is stated that physical possession of Khasra No. 50/8 total admeasuring 1 bigha and 6 biswa of land was taken over on 31st August 2005. On the aspect of compensation, it is stated that compensation was not paid.

7. In the counter affidavit filed by the DDA it is stated that the subject land was acquired by the LAC on 12th July 2005 and physical possession of the subject land was handed over to the DDA on 31st August 2005. It is further stated that the subject land is lying vacant and the Petitioner is not in

possession of the said land. On the aspect of compensation it is stated that compensation in respect of the Award No. 06/2005-06/DC (NW) was released to the LAC vide Cheque No. 074064 dated 9th August 2005 for a sum of Rs. 80,40,76,004/-.

8. No rejoinder has been filed by the Petitioner to the counter affidavit of the DDA or the LAC.

9. In the course of the hearing, it transpired that Village Pehladpur Bangar is one of the unauthorized colonies in respect of which a provisional regularization certificate has been issued. 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 had been submitted and which are awaiting regularization has been put up. Pehladpur Bangar is one of those unauthorized colonies, which figures at S.No.1505. Clearly, therefore, the property in question forms part of the unauthorized colony.

10. In any event, the assertion of the Petitioner that he is in possession of the subject land is to no avail after the orders dated 10th March 2015, 28th January 2016 and 18th October 2016 of the Supreme Court in SLP(C) No. 16385-16388 of 2012 (***Rahul Gupta v. Delhi Development Authority***). In the last mentioned order, the Supreme Court directed that if possession was not handed over within 10 days to the DDA, then the DDA would be deemed to be in possession thereof.

11. 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.”

12. 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.

13. It requires to be noted that by order dated 11th April 2019 this Court dismissed a batch of petitions seeking similar relief in respect of the lands located in the same Revenue Estate of Village Pehladpur Bangar, the lead petition in which was W.P. (C) 2591 of 2015 (**Vishwanath Aggarwalla v. LG**). In the said cases, it was contended by Mr. Akhil Sachar, who also appears for the Petitioner here that the decision in **Mool Chand v. Union of India 2019 (173) DRJ 595 (DB)** was distinguishable 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 Pehladpur 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 was submitted that since the entire colony is earmarked for redevelopment, this Court should not reject the prayers of the Petitioners.

Negating the said plea, this Court held:

“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 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.”

14. Consequently, the reliefs prayed for in the petition cannot be granted.
The writ petition is dismissed.

S. MURALIDHAR, J.

PRATEEK JALAN, J.

MAY 08, 2019

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