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

+ **W.P.(C) 3438/2015, CM APPLs.6148/2015 & 3436/2017**

KRISHNA DEVI & ORS

..... Petitioners

Through: Mr.S.Chaturvedi, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Advocate for
LAC/L&B.

Mr.Arjun Pant, Advocate for DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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25.01.2019

Dr. S. Muralidhar, J.:

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

“(i) to kindly issue a writ of certiorari and/or any other suitable writ, order and or direction declaring the entire acquisition proceedings in respect of and in relation to the petitioners' land to have lapsed and further issue order or direction quashing the impugned Notification No. F-11(19,) /2001/L&B/LA/20112 dated 21.03.2003 issued under Section 4, Notification No. F-11(19) /2004/L&B/LA/28262 dated 19.03.2004 issued under section 6 of the land acquisition act, 1894 (hereinafter referred to as the 'Old Land Acquisition Act') and Award no. 22/2005-06, with respect to lands measuring about 1100 square yards, being in joint ownership of the petitioners, falling in lands comprised in Khasra no. 54/18/1(3-0) of Village-Karala and identified by plots bearing nos. 1146 (part), plot nos. 2840 (part), 2841 to 2845, of an unauthorised colony namely

Tirthanker Nagar Jain Colony, Karala, Delhi-81, which came up on the agricultural lands falling in village-Karala. Delhi, a colony which is pending regularization with Government Of NCT Delhi and which plots are more particularly shown in the layout plan of the said colony submitted with Urban Development Department (U. C. Cell) of GNCT, Delhi.

AND

(ii) to kindly. issue a writ of mandamus and/or any other suitable writ, order or direction directing the respondents not interfere and/or obstruct the petitioners in the peaceful enjoyment over the lands measuring about 1100 square yards, being in joint ownership of the petitioners, falling in lands comprised in Khasra no. 54/18/1(3-0) of Village-Karala and identified by plots bearing nos. 1146 (part), plot nos. 2840 (part), 2841 to 2845, of an unauthorised colony namely Tirthanker Nagar Jain Colony, Karala, Delhi-81, which came up on the agricultural lands falling in village-Karala, Delhi, a colony which is pending regularization with Government Of NCT Delhi and which plots are more particularly shown in the layout plan of the said colony submitted with Urban Development Department (U. C. Cell) of GNCT, Delhi.

(iii) to kindly pass any other or further order, as this Hon'ble Court may deem fit and proper in the facts of the case and in the interest of justice.”

2. The narration in the petition is that Petitioners are owners of the aforementioned plots “by virtue of a duly registered Will dated 10th March 2013” executed by the bhumidari owner of the aforementioned lands one late Shri Giani Ram son of late Shri Rattan Lal. It is stated that late Shri Giani Ram was the father-in-law of the Petitioner No.1 and the grand-father of Petitioner Nos.2 and 3. It is then stated that late Shri Giani Ram executed another Will dated 29th November 2014 bequeathing the lands in favour of his son Shri Sat Narain as well as the Petitioners in equal 1/4th share each.

Shri Sat Narain, the husband of Petitioner No.1 and father of Petitioner Nos.2 and 3 expired on 1st March 2010.

3. What is also evident from the writ petition itself is that of the aforementioned plots bearing No.1142-44 in the total area of 875 sq.yds. and another plot measuring 245 sq.yds. were sold by late Shri Giani Ram jointly to Shri Raj Singh and Shri Surender Singh “vide usual title documents which were/are prevalent in unauthorized colonies viz. GPA, Agreement to Sell, Affidavit, Receipt and Will, all notarized and dated 3rd September 1996.” Likewise another plot measuring 430 sq.yds. appears to have been sold to Smt.Ratani Kaul again through a similar set of documents.

4. It is not disputed that notification under Section 4 of the Land Acquisition Act (LAA) was issued on 19th March 2004 followed by a declaration under Section 6 of the LAA and an Award No.22/2005-06 for the public purpose of Planned Development of Delhi. According to the Petitioners, no compensation was ever offered to be paid to the Petitioners or their predecessors-in-interest and a reference is made to information provided under the RTI Act.

5. It is also asserted that as regards lands falling in Khasra No.54/18/1 till the date of filing of the petition “physical possession” was not factually taken over by the Respondents. It is stated that the Respondents “carried out wrong and illegal cosmetic demolitions in the said colony till February 2007” i.e. Tirthankar Nagar Jain colony on certain lands falling in the said colony. It is claimed that the physical possession of the land in question is still with the Petitioners.

6. The narration shifts next to the enactment of the 2013 Act and it coming into force on 1st January 2014.

7. The petition was first listed on 10th April 2015 while directing notice to issue this Court directed the parties to maintain status quo with regard to nature, title and possession of the subject land. That interim order was sought to be vacated by the Respondents by filing CM No.3436 of 2017.

8. In a reply to the said application it is stated by Respondent No.1 Union of India that the land was notified for public purpose of 'Rohini Residential Scheme'. A separate counter-affidavit has been filed by the Delhi Development Authority (DDA) Respondent No.5 *inter alia* it is pointed out that the Petitioners have failed to disclose the *locus standi* to file the present petition and that nothing has been produced to show that the names of the Petitioners were included in the Award under the LAA. In para 3(k) of the counter-affidavit it is stated by the DDA that physical possession of the land in question was handed over to the DDA by the LAC on 23rd February 2007. A copy of the possession proceedings has been enclosed with the affidavit.

9. In a reply to the application for vacation of stay, which itself was based on the orders by the Supreme Court in SLP (C) 16385 of 2018 titled ***Rahul Gupta v. DDA***, the Petitioners contended that the land in the present petition fell in Sector 38 of Rohini whereas the orders in ***Rahul Gupta v. DDA*** pertained to the lands in other sectors i.e. 28, 29, 30 and 34 as well as 34 to 37 of Rohini.

10. The Petitioners are also set out the details of other writ petitions where the declaration of deemed lapsing of land acquisition proceedings has been issued by this Court and SLP is against the orders of this Court have also been dismissed by the Supreme Court. According to counsel for the Petitioners the said lands, which have been now placed outside the purview of the acquisition are surrounding the lands of the Petitioners. In the circumstances it is claimed that notwithstanding the orders of this Court including the order dated 10th January 2019 in WP (C) 3623 of 2018 (***Akhil Sibal v. Govt. of NCT of Delhi***) and order dated 17th January 2019 in WP (C) 4528 of 2015 (***Mool Chand v. Union of India***), this Court should nevertheless interfere in the present matter and grant relief to the Petitioners.

11. Learned counsel for the Petitioners repeatedly urged that although the Petitioners themselves had not gone to the Supreme Court against the order passed by this Court on 27th August 2010 dismissing WP (C) 2574 of 2007 titled ***Delhi Residents Welfare Association v. Union of India***, individual members of the said Welfare Association had approached the Supreme Court. In support of this plea he produced an order dated 11th February 2015 passed by the Supreme Court in SLP(C) 12302 of 2007.

12. A perusal of the above order dated 11th February 2015 reveals that it was in a batch of SLPs of 2007 and 2008 and one of 2012 arising from a final judgment and order dated 9th July 2007 in CWP No.952 of 2004 passed by this Court. There is nothing to show that in the said batch there was any SLP directed against the judgment dated 27th August 2010 passed by this Court in WP(C) 2574 of 2007.

13. When questioned on this, learned counsel for the Petitioners referred to para 29 of his application in which a reference has been made to SLP (C) 26438 of 2012 titled '*Suresh Gupta v. Union of India*' which formed part of the above batch. He says that this was by one member of the Residents Welfare Association. Although this fact is not evident from the order dated 11th February 2015 of the Supreme Court, even assuming that the said SLP was against the order dated 27th August 2010 of this Court in WP (C) 2574 of 2007, in the absence of any others questioning the said order it cannot be said that for each such person who is a member of the Resident Welfare Association and in an unauthorized colony, the Supreme Court had granted liberty to file a petition seeking a declaration under Section 24 (2) of the 2013 Act.

14. On the other hand, the order dated 11th February 2015 shows that the Supreme Court in fact dismissed the SLPs saying "we do not see any good ground to interfere with the judgment and order passed by the High Court." Liberty was granted to those Petitioners "if they may so desire to make appropriate applications provided under Section 24(2) of the 2013 Act" before the appropriate forum/High Court within one month from that date.

15. The above order by no means implied that if such petitions were filed, they had to be necessarily allowed by this Court irrespective of the facts of the particular case. What is significant is the present Petitioners themselves did not approach the Supreme Court. Even the Resident Welfare Association did not do so. Be that as it may, there is nothing in the order of the Supreme

Court to indicate that the Supreme Court had permitted residents of an unauthorized colony to seek a declaration under Section 24 (2) of the 2013 Act. There was no occasion for the Supreme Court to discuss that issue.

16. This Court has consistently held in its orders in *Akhil Sibal v. Govt. of NCT of Delhi* (*supra*) and *Mool Chand v. Union of India* (*supra*) that it is not possible for a Court to give a declaration in terms of Section 24(2) of 2013 Act where the property in question is part of an unauthorised colony that has either been granted provisional regularisation or is awaiting it. Paras 48 to 50 of the decision of *Mool Chand v. Union of India* (*supra*) explain the reasons to the Court coming to the above conclusion and read 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.”

17. The second difficulty as far as Petitioners are concerned is that although they seek to contend that the orders passed by the Supreme Court in ***Rahul Gupta v. DDA*** do not pertain to Sector 38, Rohini where the land in question is located, this Court has rejected a similar plea earlier in its order dated 22nd November 2018 in W. P. (C) 5111 of 2016 (***Jawahar Singh v. Lt. Governor***). This Court finds that in the order dated 18th October 2016 in ***Rahul Gupta v. DDA***, the Supreme Court was categorical that “in case the applicants have re-entered possession or otherwise, they shall vacate the said land and hand over its possession forthwith to the DDA, failing which it shall be assumed to be in possession of the DDA, after the expiry of ten days from the passing of the instant order.” The DDA was asked to produce the said order before this Court and seek vacation of interim orders passed in

matters relating to the Rohini Residential Scheme.

18. The third difficulty is the delay and laches in approaching this Court for relief. It is seen that the Award is of 2006 and even if one goes by the fact that the dismissal of the earlier writ petition in 2010 was allowed to become final, the present petition is clearly barred by laches.

19. In this regard the Court has been consistently following the decisions in *Mahavir v. Union of India (2018) 3 SCC 588* and *Indore Development Authority v. Shailendra (2018)* and has been dismissing similar petitions seeking the relief of a declaration of deemed lapsing of land acquisition proceedings under Section 24(2) of 2013 Act on the ground of laches. The present petition too has to meet the same fate.

20. For all the aforementioned reasons, the present petition is dismissed. The interim order passed by this Court on 10th April 2015 is hereby vacated. The applications are disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 25, 2019

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