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

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SUNIL KUMAR

W.P. (C) 3592/2016

....Petitioner

Through: Mr.Alok Dev and Ms.Richa
Singh, Advocates.

versus

UNION OF INDIA AND ORS.

....Respondents

Through: Mr.Sachin Nawani, Advocate
for R1 & R2.
Mr. Dhanesh Rhelan, Standing
Counsel for DDA.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
05.07.2019

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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 Award bearing No.06/2005-2006/DC (NW) dated 27.06.2005/ 12.07.2005, quash and set aside the same;

(b) award the cost of present proceedings in favour of petitioner.”

2. The background facts are that the land in question i.e 1 *bigha* 11 *biswas* in Khasra No. 51/22/2 min (0-5), 57/2 min (0-17), 57/3 min(0-9) in Village Prehladpur Bangar, Delhi (hereinafter, ‘subject land’)

was notified under Section 4 of the Land Acquisition Act (LAA), 1894 on 21st March, 2003 for the public purpose of planned development of Delhi.

3. This was followed by a declaration under Section 6 of the LAA on 19th March, 2004. The Land Acquisition Collector (LAC) passed the impugned Award No. 06/2005-06/DC/ (N-W) on 27th June, 2005.

4. As far as the Petitioner is concerned, it is stated in the petition that he is the recorded *bhumidar* and that “the khatauni issued on 1st January, 2016 does not mention any acquisition of the land therein”.

5. In paras 5 & 8 of the writ petition, the Petitioner states that no compensation has been paid to the Petitioner and that physical possession of the land continues to be with him. The Petitioner claims that after passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘2013 Act’), he is entitled to relief under Section 24 (2) thereof since no compensation has been paid to him and the physical possession of the land in question remains with him. In para 9 of the writ petition, the Petitioner states that the Village Prehladpur Bangar being situated in an unauthorized colony, was granted provisional regularization by a letter of the L&B Department dated 11th September, 2007.

6. Counter affidavits have been filed on behalf of the LAC/L&B Department and the DDA. In the counter affidavit filed on behalf of

the LAC, it is stated that the subject land was acquired for the purpose of the Rohini Residential Scheme. It is averred that possession of all but Khasra No. 51/22/2 (2-17) of the subject land was taken on 31st August. As regards the land bearing the aforesaid Khasra number, it is stated that possession could not be taken as the land was built-up. It is further stated that “the compensation of the land has not been disbursed to the interested persons.”

7. In the counter affidavit filed on behalf of the DDA, it is stated that the subject land was acquired for the purpose of the Rohini Residential Scheme. It is averred that possession of the land bearing Khasra No. 51112 (4-05) and 57//3 (2-08) of Village Prehladpur Bangar has been handed over by the LAC/ L&B Department to the DDA. As regards Khasra No.51//22/2 (2-17), it is stated that possession has not been handed over to the DDA. It is further averred that compensation of Rs.80,40,76,004/- by Cheque No. 074064 dated 9.8.2005 was given by the DDA to the L&B Department in respect of the award in question.

8. A rejoinder has been filed on behalf of the Petitioner to the counter affidavit of the LAC/L&B Department, in which the Petitioner has denied all averments of the LAC and reiterated the contents of the writ petition.

9. From the averments in the writ petition itself, it emerges that the subject land forms a part of Village Prehladpur Bangar, which is an unauthorized colony and has been granted provisional regularization

by a letter of the L&B Department dated 11th September, 2007. 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 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.”

10. 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 regularization of the unauthorized colony in question.

11. 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 relief under Section 24 (2) of the 2013 Act.

12. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order dated 29th April, 2016 as confirmed on 20th November, 2017 is hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 5, 2019

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