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

+ **W.P.(C) 3585/2016**

GOPAL KISHAN AND ANR.

.... Petitioners

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

versus

UNION OF INDIA AND ORS.

.... Respondents

Through: Mr Dhanesh Relan, Advocate for
DDA.
Ms Ruchika Rathi, Advocate for R-2

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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13.08.2019

1. The prayer in the present petition reads 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”

2. The background facts are that the land in question i.e. 2 *Bighas* 1.5 *Biswas* in comprised in Khasra Nos. No.51/22/2 min(0-5),57/2 min(0-17), 57/3 min(0-19.5), situated in Village Prahladpur Bangar, Delhi (hereafter, ‘subject land’) was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 21st March, 2003. This was followed by a declaration under Section 6 of the LAA dated 19th March, 2004. The Land Acquisition

Collector ('LAC') passed an award being Award No. 06/2005-2006/DC (NW) on 27th June, 2005.

3. As far as the Petitioners are concerned, it is stated that the Petitioners are the recorded owners of the subject land. In an attempt to demonstrate the same, a copy of the *Khatauni* dated 1st January, 2016 has been annexed with the petition. It is stated that the said *Khatauni* does not refer to the acquisition of the subject land. It is averred in the petition that no compensation for acquisition of the subject land has been paid to the Petitioners till date. It is further averred that due to the subject land being "built-up" possession has not been taken.

4. In para 9 of the petition, it is stated that the subject land is situated in "extended Lal Dora of Village Prahladpur Bangar". In this context, reference has been made to a letter dated 11th September, 2007 of the Land and Building Department, which is said to have conveyed the decision of the Lt. Governor of Delhi to "exempt the taking over of the lands falling within the boundaries of the unauthorized colonies, which have been granted provisional regularization". It is also stated that the said colony is "mentioned at ELD 89" in the list of unauthorized colonies published by the Respondent No. 1.

5. Counter affidavits have been filed on behalf of the LAC and the DDA. In the counter affidavit of the LAC, it is stated that as per the available records, Shri Gopal Kishan (having 1/2 share) and Shri Sham Sundar (having 1/2 share) were the recorded owners at the time when Section 4 notification was

issued. It is stated that possession of Khasra Nos.57/2 min (4-05), 57/3 min (2-08) was taken on 31st August, 2005 and handed over to the beneficiary department. As regards, Khasra No. 51/22.2 (2-17), it is stated that possession could not be take due to a stay and that, for that reason, compensation in respect of the said land was not paid.

6. In the counter affidavit of the DDA, it is stated that possession of Khasra No. 57/3 min (2-08) was taken by the LAC/L&B Department on 9th May, 2000. It is stated that the land was further transferred to “RPD IV Rohini for Rohini Residential Scheme” on 20th May, 2002. A copy of the possession proceedings has been annexed with the counter affidavit. In respect of Khasra No. 57/2 (4-05) it is stated that possession was handed over to the DDA by the LAC on 31st August, 2005 and that on the same day, the said land was transferred to RPD-IV. As regards, possession of Khasra No.51//22/2 (2-17), it is stated that possession has not been handed over by the LAC/ L&B Department to the DDA due to stay granted by the High Court in W.P.(C) No.12456/2004 and SLP(C) No. 12534-611/07, which was disposed of on 11th February, 2015. It is further stated that compensation of Rs.80,40,76,004/-for the lands that stood acquired by the impugned award was paid by way of cheque No. 074064 to the L&B Department.

7. No rejoinder has been filed by the Petitioners to the aforesaid counter affidavits.

8. From the averments in the writ petition itself, it emerges that the subject land is situated in Extended Lal Dora of Village Prahladpur Bangar, which

colony has been granted the status of provisional regularization. The petition has also pointed out the registration number of the said colony as 'ELD 89' from the list of unauthorized colonies being considered for regularization, which list has been put up on the website of the Department of Urban Development, GNCTD.

9. 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 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*). However, as clarified therein, the dismissal of the present petition will not come in the way of the Petitioners pursuing the claim for regularisation of the unauthorised colony in question.

11. There is yet another aspect to the matter. From a perusal of the impugned Award pertaining to the subject land, 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 Petitioners' own showing, the possession cannot be said to be with them. In the circumstances, it is not possible to grant the Petitioners relief under Section 24 (2) of the 2013 Act.

12. Consequently, the Court finds no merit in this writ petition and it is dismissed as such. The interim order dated 29th April, 2016 as confirmed on 27th February, 2018 stands hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 13, 2019
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