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

+ **W.P.(C) 5762/2018 & CM Appl. No. 11321/2019**

SHIV KUMAR THROUGH RAJ SINGH Petitioner
Through Mr. Akhilesh Kumar Singh, Advocate

versus

LAND ACQUISITION COLLECTOR & ORS. Respondents
Through Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advocates for Respondent/LAC/
L & B

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA

ORDER
28.03.2019

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1. With the consent of counsel for the parties, the writ petition itself is finally heard.

2. The prayers in the present petition read as under:

“a) set aside the impugned award i.e. 10/2008- 2009 (SW) passed by the Office of the ADM/LAC(SW) Room No. 12, Old Terminal Tax Building, Kapashera, New Delhi-110037 against plot bearing No.12, area measuring 135 Sq. yds. out of Khasra No. 140/3/1, situated in the Revenue Estate of Village Dhichaun Kalan, Delhi \ . 2-7- State Delhi in the abadi now known as Laxmi Vihar, Najafgarh, New Delhi.

b) Further directions to the Respondents to initiate a fresh Land Acquisition proceedings as per the new enactment.

c) Further directions to grant compensation as per the new law by

consideration of the market value of the land by setting-aside the prior award which was passed under the old Act.

d) pass any other or further order as this Hon'ble Court may deem fit and proper in the interest of justice.”

3. The background facts are that land in question i.e. Khasra No. 140/3/1 (135 Sq. yards) located in the revenue estate of Village Dichaon Kalan was notified under Section 4 of the Land Acquisition Act (LAA), 1894 on 7th April, 2006. This was followed by declaration under Section 6 of LAA on 4th April, 2007 that the land was required for the public purpose of “construction of 100 metres in under planned development of Delhi”. The Land Acquisition Collector (LAC) passed the impugned Award No. 10/2008-2009 on 30th December, 2008.

4. The Petitioner claims that he is “the owner of the plot bearing No. 12, area admeasuring 135 Sq. Yds. out of Khasra No. 140/3/1, situated in the area Village Dichaun Kalan” in the abadi now known as Laxmi Nagar, Najafgarh, New Delhi.

5. Enclosed as Annexure P-2 collectively are ‘the sale documents’. A close scrutiny of the document shows that the property in question purportedly was purchased through a General Power of Attorney (GPA) and Agreement to sell(ATS) on 8th May 2000. Apart from this not being a valid instrument for transfer of title, it appears that the Petitioner, having full knowledge of the status of the land in question, and without taking permission from the competent authority, in terms of the Delhi Land (Restriction of Transfer)

Act, 1972 entered into the said transaction.. The original recorded owner, who obviously is not the Petitioner, has not challenged the land acquisition proceedings.

6. In Para 4 of the writ petition, the Petitioner states that in May, 2009 the officials of the Land and Building (L&B) Department informed him that the land had been acquired and compensation for the same was being paid to the recorded owners. According to the Petitioner he submitted an application to the LAC regarding the payment of compensation. In the said application, it is purportedly disclosed that he is not the recorded owner and has purchased the plot through the GPA, and subsequently built a house on the land. He then claimed compensation for the structure. 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 the 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. Further, the date of passing of the Award is more than five years prior to 1st January, 2014 i.e. the date of the 2013 Act coming into force.

7. In the counter affidavit of the DDA it is pointed out that the documents enclosed with the petition do not establish the *locus standi* of the Petitioner to maintain the petition because:

- “- the Agreement to sell is on insufficient stamp paper,
- the Agreement to sell does not identify the land sold
- No prior permission is obtained from the concerned Authority
- the recitals of the Agreement to sell are false and not correct and there is deliberate concealment of the factum

- of the acquisition of the land
- there is no registered General Power of Attorney accompanying the alleged Agreement to sell,
 - Further the General Power of Attorney has not been even notarized as per the Notary Act since the same is not stamped and has not been entered in the Notarial Register.”

8. It is further averred in the counter affidavit of the DDA that:

“I say that though the petition mentions the petitioner i.e. Shri Shiv Kumar to be the owner of the of land falling in Khasra No. 140//3/1 i.e. 103 sq. yards situated in Revenue estate of Village Dichaun Kalan Delhi, body of the petition records that it is Shri Raj Singh who is the owner of the above said land on the basis of the sale documents which are annexed as annexures along with the present writ petition. Be that as it may, Shri Raj Singh too is not the owner of the land in question and has no right to maintain the present writ petition.”

9. On the aspect of possession, it is stated by the DDA that actual physical possession of Khasra No. 140/3/1 (5-17) was taken over and handed over to the Delhi Development Authority (DDA) on 10th February, 2012. On the aspect of compensation it is stated that:

“It is, however, submitted that as per the Statement 'A' the compensation in the name of Swami Ishwar Dass ji, Swami Santanand ji and Shri Shiv Kumar was deposited in the court of the Ld. ADJ. It is stated that if the recorded owner does not come forward to claim the compensation the authorities cannot be faulted. It appears that compensation was deposited in the Court in the year 2013, since the recorded owner did not come forward to collect the compensation as he had already sold the land, much prior in time and further Shri Raj Singh too has staked a claim to the compensation as is evident from the averments made in the present writ petition.”

10. No Rejoinder has been filed by the Petitioner to the counter affidavit of the DDA.

11. From the narration in the writ petition and the documents enclosed therewith, it is plain that there were a series of GPAs, none of which was a legally valid document as regards ownership and title, which form the basis of the Petitioner's claim of 'ownership' of the property in question. The Petitioner relies on the decision in ***GNCTD v. Manav Dharam Trust (2017) 6 SCC 751*** to claim that he is entitled for reliefs under Section 24 (2) of the 2013 Act.

12. In the course of the hearing, it transpired that Laxmi Nagar in Village Dichaon Kalan 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. Laxmi Nagar is one of those unauthorized colonies, which figures at S.No.912. Clearly, therefore, the property in question forms part of the unauthorized colony. This situation was not envisaged in the decision in ***GNCTD v. Manav Dharam Trust (supra)***, which, therefore, is of no assistance to the Petitioner.

13. 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 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.”

14. 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.

15. Even otherwise the Petitioner’s locus standi to claim the reliefs under Section 24 (2) of the 2013 Act is extremely doubtful.

16. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order dated 25th May, 2018 which stood confirmed on 30th November, 2018 is hereby vacated. The application is disposed of.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 28, 2019

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