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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2735/2017

MISHEER ALAM KHAN

..... Petitioner

Through

Mr. Manish Jain, Advocaet

Versus

UNION OF INDIA & ORS.

..... Respondents

Through

Mr. Kavindra Gill for UOI

Mr. Yeeshu Jain & Ms. Jyoti Tyagi,

Advocates for Respondent/LAC/

L & B

Mr. Vaibhav Agnihotri for DDA

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

10.04.2019

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

“issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to land i.e. 300 Sq. Yds. H. No. S-787/5 near Mumtaz Masjid out of 22 bigha 00 biswa, comprised in Khasra no.427/260 (22-00), situated in the revenue estate of village Jogabai, Tehsil Defence Colony, New Delhi having lapsed and further quashing of the impugned notification No. F.9(1)/89-L&B/I dated 23.06.1989 issued under Section 4, Notification No. F.9(1)/89-L&B/II & III dated 22.06.1990 issued under Section 6 & 17 of the Land Acquisition Act, 1894 and the Award No. 19/92-93 with respect to land i.e. 300 Sq. Yds. H.No. S-787/5 near Mumtaz Masjid out of 22 bigha 00 biswa, comprised in Khasra no. 427/260 (22-00), situated in

therevenue estate of village Jogabai, Tehsil Defence Colony, NewDelhi.

AND

(ii) issue a writ of mandamus and/or any other writ, order anddirection of the similar nature issuing directions to theRespondents not to disturb or hinder the possession andenjoyment of the Petitioner over land i.e. 300 Sq. Yds. H. No.S-787/5 near Mumtaz Masjid out of 22 bigha 00 biswa,comprised in Khasra no. 427/260 (22-00), situated in therevenue estate of village Jogabai, Tehsil Defence Colony,District South East, Delhi.

(iii) pass any other or further order which this Hon'ble Court maydeem fit and proper in the interest of justice.”

2. The background facts are that land in question i.e. Khasra No. 427/260(22-00) (300 Sq. yards) located in the revenue estate of Village village Jogabai, Tehsil Defence Colony was notified for acquisition under Section 4 of the Land Acquisition Act (LAA), 1894 on 23rd June 1989.

3. This was followed by declaration under Section 6 of LAA on 22nd June 1990. The Land Acquisition Collector (LAC) passed the impugned Award No. 19/92-93 on 19th June 1992.

4. The Petitioner states that he is “the owner and in actual physical possession of 300 Sq. Yds. H. No. S-787/7 near Mumtaz Masjid out of 22 bigha 00 biswa, comprised in Khasra no. 427/260 (22-00), situated in the revenue estate of Village Jogabai, Delhi”. In para 2 of the writ petition, the Petitioner states that he is still in possession of the subject land and has not

received compensation for the same. In para 5 of the petition it is stated that the land vests with the Petitioner and before him it vested with his predecessor. In Para 5(iii) of the writ petition, a series of transactions is referred to whereby the land has been transferred from one person to another. However, there is no document annexed along with the writ petition showing the ownership or title of the Petitioner *qua* the said land.

5. According to the LAC, physical possession of khasra number 427/260(22-00) was taken over and handed to the DDA on 31st December 2013. On the aspect of compensation it is stated that the Naksha Muntazim and payment file is not available in the LAC's office. Therefore, it cannot be ascertained whether compensation has been paid or not. It is pointed out that the Petitioner is not the recorded owner of the land and has not placed any document on record to show that the land in question has been purchased from the recorded owner.

6. A separate counter affidavit has been filed by the DDA stating that physical possession of the land in question was taken on 31st December 2013. It is also stated that compensation of Rs. 10 Crores was released vide cheque no. 887574 dated 28th August 1990. It is further submitted by the DDA that the Petitioner claims to have purchased the property in 2001 without placing on record any document in proof thereof. It is stated that no permission has been placed on record as per the requirement of Section 5 of the Delhi Lands (Restrictions on Transfer) Act, 1972.

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

8. Apart from the fact that the aforementioned pleadings give rise to disputed questions of fact concerning the aspects of possession and compensation, which cannot be examined in these proceedings, in the course of the hearing, it transpires that Jogabai (Okhla) 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. Jogabai is one of those unauthorized colonies, which figures at S.No.898. Clearly, therefore, the property in question forms part of the unauthorized colony.

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 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.”

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 regularisation of the unauthorised colony in question.

11. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order dated 21st March 2017 as confirmed on 13th March, 2018 stands vacated.

S.MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 10, 2019

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