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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6378/2018**

PARDESHI RAM AND ORS. Petitioners
Through: Mr. Prasoon Kumar, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Sidharth Panda, Advocate for
LAC.
Mr. Arun Birbal with Mr. Sanjay Singh,
Advocates for DDA

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

% **ORDER**
24.07.2019

1. The prayer in the present petition reads as under:

“Issue a Writ of Certiorari and/or any of the Writ, order or direction of the similar nature declaring the entire acquisition with respect to the said land of the petitioners having lapsed and further quashing the impugned notification F 11(19)/2001/L & B/LA/20112 dated 21/3/2003 and award no 13/2005-06/DC(N-W) with respect to land of the petitioners comprised in Khasra No. 23/20/2 & 23/21/2 admeasuring 4 Bigha 16 Biswas situated in the revenue estate of Begampur, Delhi.”

2. The background facts are that the land in question i.e. 4 *Bighas* 16 *Biswas* in Khasra Nos.23/20/2 & 23/21/2 situated in the Revenue Estate of Begumpur, Delhi (hereafter, ‘subject land’) was notified under Section 4 of

the Land Acquisition Act, 1894 ('LAA') on 21st March, 2003 for the public purpose of the "Rohini Residential Scheme". This was followed by a declaration under Section 6 of the LAA dated 13th March, 2004. The Land Acquisition Collector ('LAC') passed an award being Award No. 13/2005-06/DC (N-W) on 12th August, 2005.

3. As far as the Petitioners are concerned, it is stated in the petition that the Petitioners' predecessor purchased the subject land from one Sri Chand by way of a registered General Power of Attorney ('GPA'), Will and Agreement to Sell ('ATS') all dated 16th September, 2013. A copy of GPAs and ATS executed by one Dharamvir Singh in favour of Petitioner No. 1 has been annexed with the petition. Apart from these not being valid instruments for transfer of title, it appears that the Petitioners 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.

4. It is averred in the writ petition that the Petitioners after acquiring the subject land, constructed houses on the said land. It is stated that the subject land is situated in a colony that is being considered for regularization. A copy of the notification for regularization dated 17th September, 2008 has been annexed with the petition. It is further averred that compensation in respect of the subject land remains unpaid. Thereafter, the petition straightaway refers to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') and the Petitioners' entitlement to a declaration of

deemed lapsing under Section 24 (2) of the said Act on the ground that possession of the subject land remains with the Petitioners and compensation has not been paid to them.

5. Counter affidavits have been filed on behalf of the LAC and the DDA. In the counter affidavit filed on behalf of the LAC, it is averred that the Petitioners are not the recorded owners of the subject land and, therefore, have no *locus* to file the instant petition. It is further stated that possession of the subject land has not been taken and compensation has not been paid. In the counter affidavit filed on behalf of the DDA, it is averred that the Petitioners have not produced any documents to demonstrate any right, title or interest over the subject land and therefore do not have the necessary *locus* to challenge the land acquisition proceedings. It is further averred that physical possession of Khasra Nos.23/20/1-2(4-12), 21/2 and 23//21min(4-14) was taken on 27th February, 2006. It is stated that possession of the remainder of the acquired land could not be taken “due to built-up”. As regards compensation, it is averred that as per the payment register, a compensation of Rs.22,75,08,275/- by way of a cheque [cheque no. 075263] dated 25th November, 2011 was released to the L&B Department.

6. No rejoinder has been filed on behalf of the Petitioners to the counter affidavit of the LAC or the DDA. Be that as it may, from the averments in the writ petition itself, it emerges that the subject land forms part of Village Begumpur, which is an unauthorized colony and is being considered for regularization. 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 have been submitted and which are awaiting regularization has been put up. Village Begumpur is one of those unauthorized colonies which figures at SL No. 1628 (Regn No. 138 ELD). Clearly, therefore, the property in question forms part of an unauthorized colony. 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.”

7. 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.

8. There is yet another aspect to the matter. From a perusal of the impugned Award pertaining to the subject land, it is seen that the subject land was acquired for the purpose of the Rohini Residential Scheme. In that event 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 as of date. In the circumstances, it is not possible to grant the Petitioners relief under Section 24 (2) of the 2013 Act.

9. The writ petition is dismissed. The interim order dated 1st June, 2018 is hereby vacated.

S.MURALIDHAR, J.

TALWANT SINGH, J.

JULY 24, 2019

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